A GUIDE TO ELECTION YEAR ACTIVITIES OF SECTION 501(c)(3) AND 501(c)(4) ORGANIZATIONS

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TABLE OF CONTENTS

Page

STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING 1

STATUTORY AND REGULATORY PROVISIONS ON CONTRIBUTIONS TO AND FUNDRAISING FOR SECTION 501(c)(3) ORGANIZATIONS 356

REGULATORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING 390

VOTER REGISTRATION AND GET-OUT-THE-VOTE DRIVES 605

VOTER GUIDES 617

CANDIDATE APPEARANCES AND ADVERTISEMENTS 631

CANDIDATE DEBATES 646

CANDIDATE USE OF FACILITIES AND OTHER ASSETS 649

WEBSITE ACTIVITIES 664

CAMPAIGN ACTIVITIES OF SECTION 501(c)(3) ORGANIZATION'S DIRECTORS, OFFICERS, AND EMPLOYEES 766

CONSEQUENCES OF VIOLATIONS 787

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A GUIDE TO ELECTION YEAR ACTIVITIES OF SECTION 501(C)(3) AND 501(C)(4) ORGANIZATIONS

ACTIVITY	FEDERAL ELECTION CAMPAIGN ACT OF 1971, AS AMENDED ("FECA")	INTERNAL REVENUE CODE OF 1986, AS AMENDED ("I.R.C.")
STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	1. Under FECA, a corporation cannot make a contribution or expenditure in connection with any federal election from corporate treasury funds. 52 U.S.C. §30118(a) (formerly 2 U.S.C. §441b(a)); 11 C.F.R. §114.2(b) (prohibition on corporate contributions). Under Citizens United (discussed in Paragraphs 10 and 11 below), the statutory prohibition on independent expenditures by corporations is unconstitutional under the First Amendment. An independent expenditure "means an expenditure by a person–(A) expressly advocating the election or defeat of a clearly identified candidate; and (B) that is not made in concert or cooperation with or at the request or suggestion of such candidate, the candidate's authorized political committee, or their agents, or a political party or its agents." 52 U.S.C. §30101(17) (formerly 2 U.S.C. §431(17)). 2. A contribution or expenditure does not include the establishment, administration, and solicitation of contributions to a separate segregated fund, otherwise known as a political action committee ("PAC"). 52 U.S.C. §30118(b)(2)(C) (formerly 2 U.S.C. §441b(b)(2)(C)); 11 C.F.R. §§114.1(a)(2)(iii) and (b) and 114.5(b). 3. An expenditure does not include nonpartisan activity designed to encourage individuals to vote or register to vote. 52 U.S.C. §30101(9)(B)(ii) (formerly 2 U.S.C. §431(9)(B)(ii)). Nonpartisan means that no effort is made to determine the party or candidate preference of individuals	1. Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the "Code"), defines a Section 501(c)(3) organization in pertinent part as an organization "no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation (except as otherwise provided in subsection [501](h)), and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office." I.R.C. §501(c)(3); see also I.R.C. §170(c)(2)(D) (a charitable contribution eligible for an income tax deduction means a contribution or gift to or for the use of a corporation, trust, or community chest, fund, or foundation "which is not disqualified for tax exemption under section 501(c)(3) by reason of attempting to influence legislation, and which does not participate in, or intervene in (including the publishing or distributing or statements), any political campaign on behalf of (or in opposition to) any candidate for public office"). See generally Samuel D. Brunson, "A New Johnson Amendment: Subsidy, Core Political Speech, and Tax-Exempt Organizations," 43 Yale Law & Policy Review 354, 364 (2025) ("The precise reason Congress enacted the Johnson Amendment has been lost to time, if it was ever known. Introduced on the Senate floor, Congress held no

ACTIVITY	FEDERAL ELECTION CAMPAIGN ACT OF 1971, AS AMENDED ("FECA")	INTERNAL REVENUE CODE OF 1986, AS AMENDED ("I.R.C.")
STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	before encouraging them to vote or register to vote. 11 C.F.R. §100.133. 4. (a) A corporation cannot use corporate treasury funds for electioneering communications. 52 U.S.C. §30118(b)(2) and (c) (formerly 2 U.S.C. §441b(b)(2) and (c)). The Supreme Court virtually gutted this prohibition in Wisconsin Right to Life (discussed in Paragraph 9 below), and finished its work in Citizens United (discussed in Paragraphs 10 and 11 below). However, the Supreme Court in Citizens United upheld the disclosure obligations of corporations that pay for electioneering communications. An electioneering communication means any broadcast, cable, or satellite communication that: (i) refers to a clearly identified candidate for federal office. There is no requirement that the communication support or oppose any candidate. Thus, electioneering communications can include issue advertisements and grassroots lobbying; (ii) is made within sixty days of a general, special, or run-off election, or within thirty (30) days of a primary election ("Covered Period"); and (iii) is targeted to the relevant electorate. 52 U.S.C. §30104(f)(3)(A)(i) (formerly 2 U.S.C. §434(f)(3)(A)(i)); 11 C.F.R. §100.29. A primary election includes any caucus or convention of a political party that has the authority to nominate a candidate for federal office. 11 C.F.R. §100.29(a)(2).	hearings on the provision, and after its passage, nobody created an explanatory legislative history. The most commonly accepted explanation is that Senator Johnson believed that tax-exempt organizations had worked with a political opponent to challenge his incumbency. He proposed changing the law to 'put a stop to the meddling of these [tax-exempt] interlopers.' Given his reputation for being 'someone cruel and vindictive,' proposing a tax provision meant to strike back at political enemies does not seem out of character for Senator Johnson.") (footnotes omitted). 2. There is no insubstantiality exception to the Code's prohibition against campaign intervention. Association of the Bar of the City of New York v. Commissioner, 858 F.2d 876 (2d Cir. 1988), cert. denied, 490 U.S. 1030 (1989); United States v. Dykema, 666 F.2d 1096, 1101 (7th Cir. 1981); H.R. Rep. No. 91-413, 91st Cong., 1st Sess. 31-32 (1969), reprinted in 1969 U.S. Code Cong. & Admin. News 1645, 1676-1680; S. Rep. No. 91-552, 91st Cong., 1st Sess. 47 (1969), reprinted in 1969 U.S. Code Cong. & Admin. News 2027, 2074-79; Joint Committee on Taxation, Present Law and Background Relating to the Federal Tax Treatment of Political Campaign and Lobbying Activities of Tax-Exempt Organizations (JCX-7-22), at 6 (April 29, 2022) ("This statutory prohibition is absolute and applies to both types of section 501(c)(3) organizations – that is, public charities and private foundations. In theory, no amount of

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	(b) A communication is targeted if it can be received by 50,000 or more persons in the congressional district for a House candidate or in the state for a Senate candidate. 52 U.S.C. §30104(f)(3)(C) (formerly 2 U.S.C. §434(f)(3)(C)); 11 C.F.R. §100.29(a)(5). FECA does not specifically require a communication to be targeted for a Presidential election. The regulations provide that a communication that refers to a clearly identified candidate for his or her party's nomination for President or Vice President must be publicly distributed within thirty days before a primary election in such a way that the communication can be received by 50,000 or more persons within the state holding the primary election, or publicly distributed between thirty (30) days before the first day of the nominating convention and its conclusion in such a way that the communication can be received by 50,000 or more persons anywhere in the United States. 11 C.F.R. §100.29(a)(3) (ii). The Federal Communications Commission provides a database on its website at http://gullfoss2.fcc.gov/ecd/ for determining whether a communication can be received by 50,000 or more persons. (c) The term "clearly identified" means that: (i) the name of the candidate involved appears; (ii) a photo or drawing of the candidate appears; or (iii) the identity of the candidate is apparent by unambiguous reference. 52 U.S.C. §30101(18) (formerly 2 U.S.C. §431(18)). The regulations provide that	political campaign activity is consistent with an organization retaining tax-exempt status under section 501(c)(3).") (footnote omitted); IRS Publication 1828, Tax Guide for Churches and Religious Organizations, at 7 (Aug. 2015). 3. The Section 501(c)(3) prohibition against campaign intervention has been upheld against First Amendment challenge. Branch Ministries, Inc. v. Rossotti, 211 F.3d 137 (D.C. Cir. 2000); Christian Echoes National Ministry, Inc. v. United States, 470 F.2d 849, 856-57 (10th Cir. 1972) ("In light of the fact that tax exemption is a privilege, a matter of grace rather than right, we hold that the limitations contained in Section 501(c)(3) withholding exemption from nonprofit corporations do not deprive Christian Echoes of its constitutionally guaranteed right of free speech. The taxpayer may engage in all such activities without restraint, subject, however, to withholding of the exemption or, in the alternative, the taxpayer may refrain from such activities and obtain the privilege of exemption."), cert. denied, 414 U.S. 864 (1973). See also Edward A. Zelinsky, "Johnson Amendment Scope Unsettled Despite *National Religious Broadcasters* Settlement," Tax Notes (Aug. 15, 2025)("If the Johnson Amendment did not proscribe these organizations from political campaigning, political donors could route their campaign contributions on a tax-deductible basis through cooperating section 501(c)(3) entities, thereby taking income

A GUIDE TO ELECTION YEAR ACTIVITIES OF SECTION 501(C)(3) AND 501(C)(4) ORGANIZATIONS

ACTIVITY	FEDERAL ELECTION CAMPAIGN ACT OF 1971, AS AMENDED ("FECA")	INTERNAL REVENUE CODE OF 1986, AS AMENDED ("I.R.C.")
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	"clearly identified" means that the candidate's name, nickname, photograph, or drawing appears, or the identity of the candidate is otherwise apparent through an unambiguous reference such as "the President," "your Congressman," or "the incumbent," or through an unambiguous reference to his or her status as a candidate such as "the Democratic presidential nominee," or "the Republican candidate for Senate in the State of Georgia." 11 C.F.R. §100.29(b)(2). "Clearly identified" also includes a reference to a popular name of legislation identified by the sponsor's name. 67 F.R. 65,190, 65,200-201 (Oct. 23, 2002). For example, a reference to the Sarbanes-Oxley Act of 2002 made on television or radio during the Covered Period is an electioneering communication. See also Brown v. Federal Election Commission, 386 F. Supp. 3d 16 (D.D.C. 2019) (court found that the FEC was unlikely to succeed on the merits in showing that a radio ad was an electioneering communication when the ad referred to the name of the candidate's real estate business, Leigh Brown & Associates, rather than the name of the candidate, Leigh Brown, and featured the candidate's voice; ad and the current record did not provide any basis to find that listeners in the Charlotte, North Carolina area would recognize her voice). (d) An electioneering communication does not include any communication that is publicly disseminated over the Internet, or in print media, including a newspaper or	tax deductions for otherwise nondeductible campaign contributions. The Johnson Amendment forbids this behavior by directing the IRS to revoke the tax-exempt status of any section 501(c)(3) organization that undertakes campaign participation.") (available at https://www.taxnotes.com/tax-notes-today-federal/exempt-organizations/johnson-amendment-scope-unsettled-despite-national-religious-broadcasters-settlement/2025/08/15/7sxhf?highlight=zelinsky). 4. (a) In addition, a Section 501(c)(3) private foundation cannot pay or incur any amount "to influence the outcome of any specific public election, or to carry on, directly or indirectly, any voter registration drive." I.R.C. §4945(d)(2). (b) A private foundation can make certain grants to other private foundations and public charities for nonpartisan activity. See discussion of the grant requirements in Paragraphs 7 to 11 of the I.R.C. column for "Voter Registration And Get-Out-The-Vote Drives." 5. (a) On May 4, 2017, President Donald J. Trump issued "Presidential Executive Order Promoting Free Speech and Religious Liberty." Section 2 of the Order states: Respecting Religious and Political Speech. All executive departments and agencies (agencies) shall, to the greatest extent practicable and to the extent permitted by law, respect

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	magazine, handbill, brochure, bumper sticker, yard sign, poster, billboard, and mailings. 11 C.F.R. §100.29(c)(1). 5. The prohibition against using corporate treasury funds for electioneering communications does not permit a Section 501(c)(3) organization to engage in political activity that is not an electioneering communication, but is otherwise prohibited under the Internal Revenue Code. 52 U.S.C. §§30104(f)(7) and 30118(c)(5) (formerly 2 U.S.C. §§434(f)(7) and 441b(c)(5)). 6. FECA generally applies only to campaigns for federal office, which is defined as "the office of President or Vice President, or of Senator or Representative in, or Delegate or Resident Commissioner to, the Congress." 52 U.S.C. §30101(3) (formerly 2 U.S.C. §431(3)). In addition, candidates in nonfederal elections who are also federal officeholders or candidates for federal office are generally subject to FECA. 52 U.S.C. §30125(e)(1)-(2) (formerly 2 U.S.C. §441i(e)(1)-(2)); 11 C.F.R. §§300.60 to 65; FEC Advisory Opinion 2005-2 ("Senator Corzine and his agents may raise funds for the campaigns of the other New Jersey State and local candidates, State PACs, and the non-federal accounts of State and local party committees only in amounts that are not in excess of 52 U.S.C. §30116(a) (formerly 2 U.S.C. 441a(a)) and from sources that are permissible under the limitations and prohibitions of the Act;" "[S]ection 441i(e)(2) [now Section 30125(e)(2)]	and protect the freedom of persons and organizations to engage in religious and political speech. In particular, the Secretary of the Treasury shall ensure, to the extent permitted by law, that the Department of the Treasury does not take any adverse action against any individual, house of worship, or other religious organization on the basis that such individual or organization speaks or has spoken about moral or political issues from a religious perspective, where speech of similar character has, consistent with law, not ordinarily been treated as participation or intervention in a political campaign on behalf of (or in opposition to) a candidate for public office by the Department of the Treasury. As used in this section, the term "adverse action" means the imposition of any tax or tax penalty; the delay or denial of tax-exempt status; the disallowance of tax deductions for contributions made to entities exempted from taxation under section 501(c)(3) of title 26, United States Code; or any other action that makes unavailable or denies any tax deduction, exemption, credit, or benefit. (b) The former counsel to President Obama has pointed out that since the IRS has rarely enforced the prohibition on campaign intervention, the language of "not ordinarily been treated as participation or intervention in a political campaign" becomes critical to the Order's effect: Of course, the IRS would defend its non-enforcement posture as "consistent with law:" how could it say otherwise? The

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	provides that the restrictions of 2 U.S.C. 441i(e)(1)(B) [now 52 U.S.C. §30125(e)(1)(B)] do not apply to the solicitation, receipt, or spending of funds by a Federal officeholder who is also a candidate for a State or local office solely in connection with such election, if the solicitation, receipt, or spending of funds is permitted under State law and refers only to the Federal officeholder who is also a State or local candidate, and/or to his opponents."). McCONNELL, WISCONSIN RIGHT TO LIFE, AND CITIZENS UNITED 7. In McConnell v. FEC, 540 U.S. 93, 191-94 (2003), the United States Supreme Court initially upheld FECA's electioneering communication provisions against First Amendment challenge: Thus, a plain reading of Buckley makes clear that the express advocacy limitation, in both the expenditure and the disclosure contexts, was the product of statutory interpretation rather than a constitutional command. In narrowly reading the FECA provision in Buckley to avoid problems of vagueness and overbreadth, we nowhere suggested that a statute that was neither vague nor overbroad would be required to toe the same express advocacy line. Nor did we suggest as much in MCFL, 479 U.S. 238 (1986), in which we addressed the scope of another FECA expenditure limitation and confirmed the understanding that	agency would claim to have discretion to pass or act on a case, depending on the specific facts. But that means the agency *could* more consistently take action, resuming active enforcement. This Order cuts off that possibility. Note the use of "ordinarily:" the agency might but does not "ordinarily" enforce the restrictions, and this is deemed consistent with law. The Order then provides that the Secretary should make this "ordinary" non-enforcement the standing policy, disallowing deviation from it. [Bob Bauer, "The Trump Executive Order and IRS Politics," MoreSoftMoneyHardLaw.com, May 9, 2017 (available at http://www.moresoftmoneyhardlaw.com/2017/05/trump-executive-order-irs-politics/)] (c) A conservative commentator has pointed out that an executive order is a fragile basis for churches to rely on to avoid the prohibition on campaign intervention: The answer to the Johnson Amendment [the prohibition on campaign intervention], however, is to either repeal the statute or overturn it in court. This order does neither. In fact, a lawyer will commit malpractice if he tells a pastor or director of a nonprofit that this order allows a church or nonprofit to use its resources to support or oppose a candidate. Even if the Trump administration chooses not to enforce the law, a later administration can tear up Trump's

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	Buckley's express advocacy category was a product of statutory construction. In short, the concept of express advocacy and the concomitant class of magic words [vote for, elect, support, defeat, and reject] were born of an effort to avoid constitutional infirmities. See NLRB v. Catholic Bishop of Chicago, 440 U.S. 490, 500 (1979) (citing Murray v. Schooner Charming Betsy, 2 Cranch 64, 118 (1804)). We have long "rigidly adhered" to the tenet "never to formulate a rule of constitutional law broader than is required by the precise facts to which it is to be applied," United States v. Raines, 362 U.S. 17, 21 (1960) (citation omitted), for "[t]he nature of judicial review constrains us to consider the case that is actually before us," James B. Beam Distilling Co. v. Georgia, 501 U.S. 529, 547 (1991) (Blackmun, J., dissenting). Consistent with that principle, our decisions in Buckley and MCFL were specific to the statutory language before us; they in no way drew a constitutional boundary that forever fixed the permissible scope of provisions regulating campaign-related speech. Nor are we persuaded, independent of our precedents, that the First Amendment erects a rigid barrier between express advocacy and so-called issue advocacy. That notion cannot be squared with our longstanding recognition that the presence or absence of magic words cannot meaningfully distinguish electioneering speech from a true issue ad. See	order and begin vigorous enforcement based on actions undertaken during the Trump administration. Imagine, for example, that churches rely on this order to mobilize support for Trump in his 2020 reelection campaign. Imagine he loses to Kamala Harris. Then, suddenly, churches across the land would be instantly vulnerable to IRS enforcement action. Thinking they were protected, churches would find themselves in the worst of predicaments, with their rights and possibly even existences dependent on the capricious mercies of the federal courts. [David French, "Trump's Executive Order on Religious Liberty Is Worse Than Useless," National Review, May 4, 2017 (available at http://www.nationalreview.com/article/447338/)] (d) Another commentator has taken the position that the Order is legally meaningless: [The Executive Order] merely requires that the government apply the Johnson Amendment to churches in the same way that it is applied to other 501(c)(3) organizations. And because the Johnson Amendment also requires the leaders of those nonreligious organizations not to engage in partisan political activity in *their* speech activities – as a condition of entitlement to 501(c)(3)'s tax benefits – this Executive Order does not even (at least not on its face) suggest that the IRS should not enforce the Johnson Amendment as to candidate-

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ACTIVITY	FEDERAL ELECTION CAMPAIGN ACT OF 1971, AS AMENDED ("FECA")	INTERNAL REVENUE CODE OF 1986, AS AMENDED ("I.R.C.")
STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	Buckley, supra, at 45. Indeed, the unmistakable lesson from the record in this litigation, as all three judges on the District Court agreed, is that Buckley's magic-words requirement is functionally meaningless. 251 F. Supp. 2d, at 303-304 (Henderson, J.); id., at 534 (Kollar-Kotelly, J.); id. at 875-879 (Leon, J.). Not only can advertisers easily evade the line by eschewing the use of magic words, but they would seldom choose to use such words even if permitted. And although the resulting advertisements do not urge the viewer to vote for or against a candidate in so many words, they are no less clearly intended to influence the election. Buckley's express advocacy line, in short, has not aided the legislative effort to combat real or apparent corruption, and Congress enacted BCRA to correct the flaws it found in the existing system. Finally we observe that new FECA §304(f)(3)'s definition of "electioneering communication" raises none of the vagueness concerns that drove our analysis in Buckley. The term "electioneering communication" applies only (1) to a broadcast (2) clearly identifying a candidate for federal office, (3) aired within a specific time period, and (4) targeted to an identified audience of at least 50,000 viewers or listeners. These components are both easily understood and objectively determinable. See Grayned v. City of Rockford, 408 U.S. 104, 108-114 (1972). Thus, the constitutional objection that persuaded the Court in Buckley	specific speech in churches, or from pulpits. As I note later in this post, the IRS does not ordinarily take steps against churches even in such cases; accordingly, the effect of this section of the E.O. appears to be . . . nothing at all. [Marty Lederman, "Don't Believe the Hype: Understanding the Johnson Amendment Kerfuffle," Take Care, May 4, 2017 (available at https://takecareblog.com/blog/updated-don-t-believe-the-hype-understanding-the-johnson-amendment-kerfuffle)] (f) Finally, another commentator has proposed that Section 501(c)(3) be amended for churches as follows: [The amendment would] create a statutory safe harbor protecting internal church communications from both the ban on political campaigning and the ban on substantial lobbying. No inference or presumption should arise as to activity or expression outside the proposed statutory safe harbor. This proposal would shelter the internal expressive autonomy of churches while continuing to deter the use of churches and other tax-exempt organizations to divert tax-deductible resources into political activity. This statutory safe harbor would reduce the possibilities for church-state enforcement entanglement since the IRS would no longer be required to monitor and evaluate internal church communications for their content.

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	to limit FECA's reach to express advocacy is simply inapposite here. [footnotes omitted] 8. It is important to note that in a dissenting opinion in McConnell written by Justice Kennedy, three dissenters, Chief Justice Rehnquist and Justices Kennedy and Scalia, were critical of Buckley: "The Government and the majority are right about one thing: The express-advocacy requirement, with its list of magic words, is easy to circumvent." 540 U.S. at 323. The dissenters then rejected the prohibition on the use of corporate treasury funds for electioneering communications not because of Buckley's distinction between express advocacy and issue advocacy, but because it unlawfully impinged on First Amendment rights. 9. (a) In FEC v. Wisconsin Right to Life, Inc., 551 U.S. 449 (2007), the United States Supreme Court held that application of the electioneering prohibition to three broadcast advertisements that Wisconsin Right to Life, a Section 501(c)(4) organization, proposed to run in 2004 violated that organization's First Amendment right to engage in grassroots lobbying and issue advocacy. The advertisements urged Wisconsin voters to contact their Senators, Russell Feingold and Herb Kohl, and request that they oppose efforts to filibuster President Bush's federal judicial nominees. The advertisements also contained the following language in a voice-over: "Sometimes it's just not	Contrary to the recommendations of some commentators, I would not treat "official" or "explicit" endorsements differently from other internal church discussions. A ban on express endorsements would require the IRS to continue to scrutinize in-house church communications. My proposal instead reduces the church-state enforcement entanglement which arises when the tax collector must monitor in-house church discussions. Such monitoring would continue if "official" and "explicit" endorsements remain off-limits to tax-exempt churches. [Edward Zelinsky, "Churches' Lobbying and Campaigning: A Proposed Statutory Safe Harbor for Internal Church Communications," 68 Rutgers University Law Review 1527, 1545-46 (Summer 2017)] 6. (a) In National Religious Broadcasters v. Commissioner, Civil Action No. 6:24-cv-00311 (E.D. Tex. July 7, 2025), the parties jointly filed a motion to approve a consent judgment to resolve plaintiffs' claims that Section 501(c)(3) facially and as applied violates their First Amendment right to freedom of speech and free exercise of religion, their Fifth Amendment right to due process of law and equal protection under the law, and the Religious Freedom Restoration Act. (b) The joint motion provided: When a house of worship in good faith speaks to its congregation, through its customary channels of communication on matters of faith in connection with

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	fair to delay an important decision. But in Washington it's happening. A group of Senators is using the filibuster delay tactic to block federal judicial nominees from a simple 'yes' or 'no' vote. So qualified candidates don't get a chance to serve. It's politics at work, causing gridlock and backing up some of our courts to a state of emergency." Since Senator Feingold was a candidate in the September 3, 2004 primary, the ads triggered the electioneering prohibition during the thirty days prior to the primary. (b) In the Court's principal opinion by Chief Justice Roberts, joined in by Justice Alito, the Court held that for as applied challenges to FECA's electioneering prohibition, the prohibition is enforceable under the First Amendment only with respect to ads that are express advocacy or the functional equivalent of express advocacy. An ad is the functional equivalent of express advocacy only if the ad is "susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate." 551 U.S. at 470. In applying this test, a court uses the following guidelines: (i) the inquiry must be objective, focusing on the substance of the communication, rather than amorphous considerations of intent and effect; (ii) contextual factors should rarely play a significant role in the inquiry; (iii) since the government has the burden of justifying restrictions on political speech, the speaker gets the benefit of any doubt; and (iv) if an ad may reasonably be interpreted as something other than as an appeal to vote for or against a specific	religious services, concerning electoral politics viewed through the lens of religious faith, it neither "participate[s]" nor "intervene[s]" in a "political campaign," within the ordinary meaning of those words. To "participate" in a political campaign is "to take part" in the political campaign, and to "intervene" in a political campaign is "to interfere with the outcome or course" of the political campaign. *See Participate*, *Merriam-Webster's Dictionary* (2025); *Intervene*, *Merriam-Webster's Dictionary* (2025). Bona fide communications internal to a house of worship, between the house of worship and its congregation, in connection with religious services, do neither of those things, any more than does a family discussion concerning candidates. Thus, communications from a house of worship to its congregation in connection with religious services through its usual channels of communication on matters of faith do not run afoul of the Johnson Amendment as properly interpreted. [Section 7 of Joint Motion for Entry of Consent Judgment] (c) The joint motion provided the following rationale: For many houses of worship, the exercise of their religious beliefs includes teaching or instructing their congregations regarding all aspects of life, including guidance concerning the impact of faith on the choices inherent in electoral politics. Interpreting the Johnson Amendment to reach such communications would create serious tension with the First Amendment's Establishment Clause: That broad

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	candidate, then the ad is not the functional equivalent of express advocacy. More specifically, a court considers whether the ads "focus on a legislative issue, take a position on the issue, exhort the public to adopt that position, and urge the public to contact public officials with respect to the matter." 551 U.S. at 470. (c) The Court found that the advertisements did not meet this test. First, the advertisements focused on the legislative issue of filibustering Senate votes on judicial nominees. They took a position on this issue, exhorted the public to adopt that portion, and urged the public to contact public officials with respect to the matter. Second, the advertisements did "not mention an election, candidacy, political party, or challenger." 551 U.S. at 470. Third, the advertisements did not "take a position on a candidate's character, qualifications, or fitness for office." Id. (d) In an opinion concurring in the judgment, Justice Scalia, joined in by Justices Kennedy and Thomas, wrote that the First Amendment requires clear tests for distinguishing express advocacy from issue advocacy, and clear tests that protected all issue ads would "cover such a substantial number of ads prohibited by §203 [of the Bipartisan Campaign Reform Act of 2002] that §203 would be rendered substantially overbroad." 551 U.S. at 498. The only way to constitutionally separate express advocacy from	interpretation would treat religions that do not speak directly to matters of electoral politics more favorably than religions that do so – favoring some religions over others based on their speech to their own congregations in connection with religious services through customary channels of worship and religious communication. *See Catholic Charities Bureau, Inc. v. Wisconsin Labor & Indus. Rev. Comm'n*, 145 S. Ct. 1583, 1591 (2025) ("'The clearest command of the Establishment Clause' is that the government may not 'officially prefe[r]' one religious denomination over another." (quoting *Larson v. Valente*, 456 U.S. 228, 246 (1982))). [Section 9 of Joint Motion for Entry of Consent Judgment] (d) One commentator points out the following issues with the standard set forth in the joint motion: How narrowly or widely does "concerning electoral politics viewed through the lens of religious faith" reach? Does it allow a minister during a worship service to simply endorse or oppose a candidate by name, or must any such statement be explicitly tied to particular religious beliefs? Should there be a different rule for virtual attendance or an exclusively online house of worship? Do customary channels of communication include the posting of videos or audio files of worship services or sermons delivered on the congregation's website or broadcast on television or streaming channels, where any member of the public could access them? Does a

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	issue advocacy would be to overrule McConnell and reinstitute the "magic words" test of Buckley. Id. at 499. (e) In a dissenting opinion, Justice Souter, joined in by Justices Stevens, Ginsburg, and Breyer, wrote that the ads were analogous to the ads upheld in McConnell, ads that attacked a candidate's record before urging viewers to call the candidate. 551 U.S. at 523-27. Furthermore, separating an ad from its context before determining whether a reasonable person would view it as an appeal to vote for or against a candidate not only resurrected Buckley's "magic words" test, but also enabled some ads that used the "magic words" to escape regulation. Finally, the principal opinion improperly treated §203 as a speech ban rather than a limitation on corporate funding. Corporations were free to speak through their PACs, and had Wisconsin Right to Life not used corporate contributions to pay for its ads, it could have ran the ads free of §203's limitations. See discussion of the distinction between permissible issue advocacy and impermissible campaign intervention under Code Section 501(c)(3) in Paragraphs 9 to 13 of the I.R.C. column for "Regulatory Provisions on Contributions, Expenditures, and Electioneering." 10. (a) In Citizens United v. Federal Election Commission, 558 U.S. 310 (2010), the United States Supreme Court held that corporations have a First Amendment right to make	customary channel of communication reach to inviting a candidate who shares the congregation's views on issues to speak during a worship service, so long as the congregation regularly invites speakers to do so? Does further exposure of the campaign communication by dispersion through mass media coverage or by members of the congregation through their own social media engagement affect the protection? [Ellen P. Aprill, "Misunderstanding National Religious Broadcasters," Tax Notes (July 25, 2025) (available at https://www.taxnotes.com/tax-notes-today-federal/exempt-organizations/misunderstanding-national-religious-broadcasters/2025/07/25/7ss1m)] (e) This commentator also points out that the proposed consent order would apply only to the two church plaintiffs in the case, and broader administrative action is necessary for a national rule: "A national rule with legal effect would need to be issued by the IRS itself in the form of a revenue ruling, revenue procedure, or at least a notice, if not a proposed regulation." Id.; see also Edward A. Zelinsky, "Johnson Amendment Scope Unsettled Despite *National Religious Broadcasters* Settlement," Tax Notes (Aug. 15, 2025) ("[A]s a procedural matter, a settlement in a district court is not a good way to clarify the reach of the Johnson Amendment. The Johnson Amendment's impact on churches should instead be addressed through the regulatory process or, even better, by legislation. A regulatory or legislative process would be open to more interested voices, not just the parties

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	independent expenditures for express advocacy communications. The Court struck down as unconstitutional the prohibition under 52 U.S.C. §30118 (formerly 2 U.S.C. §441b) on corporations from using their general treasury funds to make independent expenditures, and the prohibition under 52 U.S.C. §30118 (formerly 2 U.S.C. §441b) on corporations from using their general treasury funds for electioneering communications or communications that expressly advocate the election or defeat of a candidate. The Court also overruled Austin v. Michigan Chamber of Commerce, 494 U.S. 652 (1990), and McConnell v. Federal Election Commission, 540 U.S. 93, 203-209 (2003), insofar as Austin held that political speech may be banned based on the speaker's corporate identity, and insofar as McConnell upheld the prohibition on electioneering communications. (b) The Court's opinion was delivered by Justice Kennedy, and Justices Roberts, Scalia, Alito, and Thomas joined in the opinion. Justice Stevens dissented, and Justices Ginsburg, Breyer, and Sotomayor joined the dissent. (c) Citizens United, a Virginia-based nonprofit corporation, produced Hillary: The Movie, a ninety-minute movie about the candidate for the Democratic nomination for President, Senator Hillary Rodham Clinton. The movie focused on Senator Clinton's Senate record and her White House record during President William Clinton's term. The movie	to the settlement. Moreover, regulation or legislation could confront important details unaddressed by the *National Religious Broadcasters* settlement.") (available at https://www.taxnotes.com/tax-notes-today-federal/exempt-organizations/johnson-amendment-scope-unsettled-despite-national-religious-broadcasters-settlement/2025/08/15/7sxhf?highlight=zelinsky). (f) Another commentator points out the following issues with the joint motion: [T]he *National Religious Broadcasters* settlement agreement does not define the customary channels of communication for intracongregational conversations. First Baptist Church Waskom touts its YouTube channel. At what point do such forms of electronic communications, freely available to anyone, cease to be internal congregational conversations? The *National Religious Broadcasters* settlement makes no effort to answer this question. Or consider a church with a traditional marquee board on its lawn. Suppose that for the upcoming Sunday, the marquee board's message invites everyone who walks or drives by to come to services at 10 a.m. and hear a sermon titled, "The Importance of Protecting Fetal Life" or "The Importance of Protecting Women's Choice." The marquee board is likely "customary," but it is placed outside, where all members of the public (not just the church's congregants) can see it and

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	contained express opinions of whether she would make a good President, but did not expressly advocate her election or defeat. The movie called Senator Clinton "dishonest," "Machiavellian," and "willing to do anything for power." Citizens United released the movie for sale on DVD on January 7, 2008. Citizens United planned to run three TV ads to promote the movie in January 2008, and also planned to market the movie via video-on-demand cable TV. If Citizens United ran the ads on TV, or broadcast the movie on a video-on-demand channel, it risked violating the prohibition on corporate-funded electioneering communications during a primary. (d) The standard of judicial review under Wisconsin Right to Life for laws that restrict political speech is strict scrutiny, which requires the government to prove that the restriction furthers a compelling interest, and is narrowly tailored to achieve that interest. (e) The Court held that the First Amendment protects speech, rather than the individual or corporate identity of the speaker: Premised on mistrust of governmental power, the First Amendment stands against attempts to disfavor certain subjects or viewpoints. See, e.g., United States v. Playboy Entertainment Group, Inc., 529 U.S. 803, 813 (2000) (striking down content-based restriction). Prohibited, too,	its message. [Edward A. Zelinsky, "Johnson Amendment Scope Unsettled Despite *National Religious Broadcasters* Settlement," Tax Notes (Aug. 15, 2025) (footnote omitted)] (g) The court dismissed the case without prejudice for lack of subject matter jurisdiction under the Tax Anti-Injunction Act and the Declaratory Judgment Act. The Johnson Amendment exempts organizations from taxes if they do not participate or intervene in political campaigns. If credited, plaintiffs' claims would restrain the assessment or collection of a tax based on certain activity. These statutes apply because plaintiffs' claims are in respect of taxes and seek to restrain the threat of tax collection based on certain activity. 26 U.S.C. §7421; 28 U.S.C. §2201; Bob Jones University v. Simon, 416 U.S. 725, 748-49 (1974) (Tax Anti-Injunction Act precluded jurisdiction over a suit seeking relief from the threatened loss of the plaintiff's tax-exempt status under Section 501(c)(3)). National Religious Broadcasters v. Bessent, 2026 WL 884020 (E.D. Tex. March 31, 2026). (h) Four days after the case was dismissed the U.S. Department of the Treasury announced that it plans to develop and issue additional guidance on the application of the Johnson Amendment to religious organizations. The guidance will provide clear, administrable standards for houses of worship, including how the law applies to certain communications made within the context of religious services. Bulletin of the U.S. Department of the Treasury,

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	are restrictions distinguishing among different speakers, allowing speech by some but not others. See First Nat. Bank of Boston v. Bellotti, 435 U.S. 765, 784 (1978). As instruments to censor, these categories are interrelated: Speech restrictions based on the identity of the speaker are all too often simply a means to control content. Quite apart from the purpose of effect of regulating content, moreover, the Government may commit a constitutional wrong when by law it identifies certain preferred speakers. By taking the right to speak from some and giving it to others, the Government deprives the disadvantaged person or class of the right to use speech to strive to establish worth, standing, and respect for the speaker's voice. The Government may not by these means deprive the public of the right and privilege to determine for itself what speech and speakers are worthy of consideration. The First Amendment protects speech and speaker, and the ideas that flow from each. [558 U.S. at 340-41]. (f) The Court rejected the antidistortion rationale of Austin and the need to protect the public from corporate speech: It is irrelevant for purposes of the First Amendment that corporate funds may "have little or no correlation to the public's support for the corporation's political ideas." Id. at 660 [Austin, 494 U.S. at 660] (majority opinion). All speakers, including individuals and the media, use money	Office of Public Affairs, "Treasury and IRS to Provide Guidance to Religious Organizations" (April 3, 2026).

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	amassed from the economic marketplace to fund their speech. The First Amendment protects the resulting speech, even if it was enabled by economic transactions with persons or entities who disagree with the speaker's ideas. See id., at 707 (Kennedy, J., dissenting) ("Many persons can trace their funds to corporations, if not in the form of donations, then in the form of dividends, interest, or salary."). [558 U.S. at 351]. . . . . Austin interferes with the "open marketplace" of ideas protected by the First Amendment. New York State Bd. Of Elections v. Lopez Torres, 552 U.S. 196, 208 (2008); see ibid. (ideas "may compete" in this marketplace "without government interference."); McConnell, supra, at 274 (opinion of Thomas, J.). It permits the Government to ban the political speech of millions of associations of citizens. See Statistics of Income 2 (5.8 million for-profit corporation filed 2006 tax returns). Most of these are small corporations without large amounts of wealth. See Supp. Brief for Chamber of Commerce of the United States of America as *Amicus Curiae* 1, 3 (96% of the 3 million businesses that belong to the U.S. Chamber of Commerce have fewer than 100 employees); M. Keightley, Congressional Research Service Report for Congress, Business Organizational Choices: Taxation and Responses to Legislative Changes 10 (2009) (more than 75% of corporations whose income is	

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	taxed under federal law, see 26 U.S.C. §301, have less than $1 million in receipts per year). This fact belies the Government's argument that the statute is justified on the ground that it prevents the "distorting effects of immense aggregations of wealth." Austin, 494 U.S. at 660. It is not even aimed at amassed wealth. [558 U.S. at 354]. (g) The Court also found the need to prevent corruption insufficient to justify the prohibition on independent expenditures by corporations: With regard to large direct contributions, Buckley reasoned that they could be given "to secure a political *quid pro quo*," id., at 26 [424 U.S. at 26] and that "the scope of such pernicious practices can never be reliably ascertained," id., at 27. The practices Buckley noted would be covered by bribery laws, see, e.g., 18 U.S.C. §201, if a *quid pro quo* arrangement were proved. See Buckley, supra, at 27, and n. 28 (citing Buckley v. Valeo, 519 F. 2d 821, 839-840, and nn. 36-38 (CADC 1975) (en banc) (*per curiam*)). The Court, in consequence, has noted that restrictions on direct contributions are preventative, because few if any contributions to candidates will involve *quid pro quo* arrangements. MCFL, 479 U.S., at 260; NCPAC, 470 U.S., at 500; Federal Election Comm'n v. National Right to Work Comm., 459 U.S. 197, 210 (1982) (NRWC).The Buckley Court, nevertheless, sustained limits on direct contributions in order to ensure against the reality or appearance of	

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	corruption. That case did not extend this rationale to independent expenditures, and the Court does not do so here. The absence of prearrangement and coordination of an expenditure with the candidate or his agent not only undermines the value of the expenditure to the candidate, but also alleviates the danger that expenditures will be given as a *quid pro quo* for improper commitments from the candidate." Buckley, 424 U.S., at 47; see ibid. (independent expenditures have a "substantially diminished potential for abuse."). Limits on independent expenditures, such as §30118 (formerly §441b), have a chilling effect extending well beyond the Government's interest in preventing *quid pro quo* corruption. The anticorruption interest is not sufficient to displace the speech here in question. Indeed, 26 States do not restrict independent expenditures by for-profit corporations. The Government does not claim that these expenditures have corrupted the political process in those States. See Supp. Brief for Appellee 18, n.3; Supp. Brief for Chamber of Commerce of the United States of America as *Amicus Curiae* 8-9, n. 5 [558 U.S. at 356-57] (h) Finally, the Court rejected the FEC's two-part, eleven factor balancing test for determining express advocacy. Such a test functioned as an unlawful prior restraint of First Amendment rights. 558 U.S. at 333-36.	

A GUIDE TO ELECTION YEAR ACTIVITIES OF SECTION 501(C)(3) AND 501(C)(4) ORGANIZATIONS

ACTIVITY	FEDERAL ELECTION CAMPAIGN ACT OF 1971, AS AMENDED ("FECA")	INTERNAL REVENUE CODE OF 1986, AS AMENDED ("I.R.C.")
STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	11. (a) The dissent in Citizens United argued that the identity of corporations makes a critical difference in the First Amendment analysis: [I]t is the identity of corporations, rather than individuals, that the Legislature has taken into account. As we have unanimously observed, legislatures are entitled to decide "that the special characteristics of the corporate structure require particularly careful regulation" in an electoral context. NRWC, 459 U.S., at 209-210.[50] Not only has the distinctive potential of corporations to corrupt the electoral process long been recognized, but within the area of campaign finance, corporate spending is also "furthest from the core of political expression, since corporations' First Amendment speech and association interests are derived largely from those of their members and of the public in receiving information," Beaumont, 539 U.S., at 161, n.8 (citation omitted). Campaign finance distinctions based on corporate identity tend to be less worrisome, in other words, because the "speakers" are not natural persons, much less members of our political community, and the governmental interests are of the highest order. Furthermore, when corporations, as a class, are distinguished from noncorporations, as a class, there is a lesser risk that regulatory distinctions will reflect invidious discrimination or political favoritism.	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	[50] They are likewise entitled to regulate media corporations differently from other corporations "to ensure that the law 'does not hinder or prevent the institutional press from reporting on, and publishing editorials about, newsworthy events.'" McConnell, 540 U.S., at 208 (quoting Austin v. Michigan Chamber of Commerce, 494 U.S. 652, 668 (1990)) [558 U.S. at 423-24] (b) The dissent relied on protecting the integrity of the marketplace of ideas from the potential distortion caused by corporate expenditures as sufficient justification for the prohibition on corporate expenditures: [I]n Austin, 494 U.S. 652, we considered whether corporations falling outside the MCFL exception could be barred from using general treasure funds to make independent expenditures in support of, or in opposition to, candidates. We held they could be. Once again recognizing the importance of "the integrity of the marketplace of political ideas" in candidate elections, MCFL, 479 U.S., at 257, we noted that corporations have "special advantages—such as limited liability, perpetual life, and favorable treatment of the accumulation and distribution of assets," 494 U.S., at 658-569—that allow them to spend prodigious general treasury sums on campaign messages that have "little or no correlation" with the beliefs held by actual persons, id., at 660. In light of the corrupting effects such spending might have on the political process, ibid., we	

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	permitted the State of Michigan to limit corporate expenditures on candidate elections to corporations' PACs, which rely on voluntary contributions and thus "reflect actual public support for the political ideals espoused by corporations," ibid. Notwithstanding our colleagues' insinuations that Austin deprived the public of general "ideas," "facts," and "knowledge," ante, at 38-29, the decision addressed only candidate-focused expenditures and gave the State no license to regulate corporate spending on other matters. [558 U.S. at 438]. (c) The dissent also relied on maintaining the trust of the public in the democratic process: Our "undue influence" cases have allowed the American people to cast a wider net through legislative experiments designed to ensure, to some minimal extent, "that officeholders will decide issues … on the merits or the desires of their constituencies," and not "according to the wishes of those who have made large financial contributions"—or expenditures—"valued by the officeholder." McConnell, 540 U.S., at 153.[63] When private interests are seen to exert outsized control over officeholders solely on account of the money spent on (or withheld from) their campaigns, the result can depart so thoroughly "from what is pure or correct" in the conduct of Government, Webster's Third New International Dictionary 512 (1966) (defining "corruption"), that it amounts to a	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	"subversion… of the electoral process," Automobile Workers, 352 U.S., at 575. At stake in the legislative efforts to address this threat is therefore not only the legitimacy and quality of Government but also the public's faith therein, not only "the capacity of this democracy to represent its constituents [but also] the confidence of its citizens in their capacity to govern themselves," WRTL, 551 U.S., at 507 (Souter, J., dissenting). "Take away Congress' authority to regulate the appearance of undue influence and 'the cynical assumption that large donors call the tune could jeopardize the willingness of voters to take part in democratic governance.'" McConnell, 540 U.S., at 144 (quoting Shrink Missouri, 528 U.S., at 390).[64] [63] Cf. Nixon v. Shrink Missouri Government PAC, 528 U.S. 377, 398 (2000) (recognizing "the broader threat from politicians too compliant with the wishes of large contributors"). Though discrete in scope, these experiments must impose some meaningful limits if they are to have a chance at functioning effectively and preserving the public's trust. "Even if it occurs only occasionally, the potential for such undue influence is manifest. And unlike straight cash-for-votes transactions, such corruption is neither easily detected nor practical to criminalize." McConnell, 540 U.S., at 153. There should be nothing controversial about the proposition that the influence being targeted is "undue." In a democracy, officeholders should not make public decisions with the aim of placating a financial benefactor,	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	expect to the extent that the benefactors is seen as representative of a larger constituency or its arguments are seen as especially persuasive. [64] The majority declares by fiat that the appearance of undue influence by high-spending corporations "will not cause the electorate to lose faith in our democracy." Ante, at 44. The electorate itself has consistently indicated otherwise, both in opinion polls, see McConnell v. FEC, 251 F. Supp. 2d 176, 557-558, 623-624 (DC 2003) (opinion of Kollar-Kotelly, J.), and in the laws its representatives have passed, and our colleagues have no basis for elevating their own optimism into a tenet of constitutional law. [558 U.S. at 449-50] (d) In an 8-1 decision, the Court upheld the disclosure provisions of 2 U.S.C. §434(f)(1)-(2) [now 52 U.S.C. §30104(f)(1)-(2)], which require any person who spends more than $10,000 on electioneering communications in a calendar year to file a disclosure statement with the FEC. The statement must: (i) identify the person making the expenditure; (ii) the custodian of the books and accounts of the person making the expenditure; (iii) the amount of each expenditure of more than $200 during the period covered by the statement and the identification of the person to whom the expenditure was made; (iv) the elections to which the electioneering communications pertain and the names (if known) of the candidates identified or to be identified; and (v) if the expenditures were paid out of a segregated bank	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	account that consists of funds contributed solely by individuals who are United States citizens or nationals or lawfully admitted for permanent residence directly to this account for electioneering communications, the names and addresses of all contributors who contributed an aggregate amount of $1,000 or more to that account during the period beginning on the first day of the preceding calendar year and ending on the disclosure date. (e) The person must file the statement within twenty-four hours after each disclosure date. 52 U.S.C. §30104(f)(1) (formerly 2 U.S.C. §434(f)(1)). "Disclosure date" means (i) the first date during any calendar year by which a person has made disbursements for the direct costs of producing or airing electioneering communications aggregating more than $10,000; and (ii) any other date during such calendar year by which a person has made disbursements for the direct costs of producing or airing electioneering communications aggregating in excess of $10,000 since the most recent disclosure date for such calendar year. 52 U.S.C. §30104(f)(4) (formerly 2 U.S.C. §434(f)(4)). (f) The test of constitutionality of disclosure requirements is that there must be a substantial relation between the disclosure requirement and a sufficiently important governmental interest. 558 U.S. at 366-67. A sufficiently important governmental interest is providing the electorate with information about the sources of election-related	

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	spending so that voters can make informed decisions, and give proper weight to different speakers and messages. The disclosure requirement satisfied this test. The Court also rejected the argument that under the First Amendment FECA's disclosure requirements must be limited to express advocacy or the functional equivalent of express advocacy. 558 U.S. at 368-69. (g) While the disclosure requirements may burden the ability to speak, they impose no ceiling on campaign-related activities and do not prevent anyone from speaking. Finally, as the argument that disclosure requirements could deter contributions because contributors may fear retaliation, the Court held that the disclosure requirements would be unconstitutional as applied to an organization when there is a reasonable probability that its contributors would be subject to harassment, reprisals, or threats. 558 U.S. at 370; National Association for the Advancement of Colored People v. Alabama, 357 U.S. 449, 462-63 (1958). See also Doe v. Reed, 561 U.S. 186 (2010) (Court upheld under exacting scrutiny standard compelled disclosure under Washington state law of signatory information on referendum petitions; state's interest in preserving the integrity of the electoral process was sufficient to justify disclosure; the interest applied to efforts to ferret out invalid signatures caused by fraud and simple mistake, such as duplicate signatures or signatures of individuals who are not	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	registered to vote in the state; the interest also extends more generally to promoting transparency and accountability in the electoral process). THE PROGENY OF WISCONSIN RIGHT TO LIFE AND CITIZENS UNITED FOR LIMITATIONS ON CONTRIBUTIONS AND INDEPENDENT EXPENDITURES 12. (a) In SpeechNow.org v. Federal Election Commission, 599 F.3d 686 (D.C. Cir. 2010) (en banc), cert. denied sub nom. Keating v. Federal Election Commission, 562 U.S. 1003 (2010), the court, relying on Citizens United, held that individuals can make unlimited contributions to an unincorporated nonprofit association registered as a political organization under Section 527 of the Internal Revenue Code, and that operated exclusively by making independent expenditures: "In light of the Court's holding as a matter of law that independent expenditures do not corrupt or create the appearance of *quid pro quo* corruption, contributions to groups that make only independent expenditures also cannot corrupt or create the appearance of corruption. The Court has effectively held that there is no corrupting 'quid' for which a candidate might in exchange offer a corrupt 'quo.'" 599 F.3d at 694-95. Accordingly, the contribution limits of 52 U.S.C. §30116(a)(1)(C) and (3) (formerly 2 U.S.C. §441a(a)(1)(C) and (3)) were unconstitutional as applied to	

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	individuals' contributions to an independent expenditure group. See also American Tradition Partnership, Inc. v. Bullock, 567 U.S. 516 (2012) (per curiam) (Court struck down Montana statute that prohibited corporations from making expenditures in connection with a candidate or a political committee that supports or opposes a candidate or political party); Catholic Leadership Coalition of Texas v. Reisman, 764 F.3d 409 (5th Cir. 2014) (Texas statute required that once a general purpose committee registered with the Texas Election Commission, it must collect contributions from ten contributors and wait sixty days before exceeding $500 in contributions and expenditures; court held that the sixty-day, $500 limit unconstitutionally limited a general purpose committee to funding only $500 in independent expenditures; court also held that the ten contributor requirement unconstitutionally capped a newly-formed general purpose committee at $500 worth of independent expenditures until the committee acquired ten contributors); Wisconsin Right to Life, Inc. v. Barland, 751 F.3d 804 (7th Cir. 2014) (court struck down statutory prohibition on independent expenditures by corporations, and cap on amount that corporations may spend to solicit contributions to an affiliated independent-expenditure PAC); Republican Party of New Mexico v. King, 741 F.3d 1089 (10th Cir. 2013) (court upheld preliminary injunction against enforcement of New Mexico statute that capped	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	contributions from individuals to political committees that are not formally affiliated with a political party or candidate at $5,000 as applied to the solicitation and acceptance of contributions for independent expenditures); New York Progress & Protection PAC v. Walsh, 733 F.3d 483 (2d Cir. 2013) (court granted preliminary injunction against enforcement of aggregate limit under New York statute on an individual's contributions to groups for independent expenditures); Texans for Free Enterprise v. Texas Ethics Commission, 732 F.3d 535, 537-38 (5th Cir. 2013) (court upheld preliminary injunction against enforcement of Texas statute that prohibited corporate contributions to general purpose political committees that used funds only for direct campaign expenditures for political speech that was independent of candidates and parties; "There is no difference in principle – at least where the only asserted state interest is preventing apparent or actual corruption – between banning an organization such as TFE from engaging in advocacy and banning it from seeking funds to engage in that advocacy (or in giving funds to other organizations to allow them to engage in advocacy on its behalf" (footnotes omitted)); Farris v. Seabrook, 677 F.3d 858 (9th Cir. 2012) (no state interest in limiting contributions to independent recall committees at $800); Wisconsin Right to Life State Political Action Committee v. Barland, 664 F.3d 139 (7th Cir. 2011) (application of statute that limited the amount individuals may contribute to state	

ACTIVITY	FEDERAL ELECTION CAMPAIGN ACT OF 1971, AS AMENDED ("FECA")	INTERNAL REVENUE CODE OF 1986, AS AMENDED ("I.R.C.")
STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	and local candidates, political parties, and political committees to $10,000 in any calendar year to organizations engaged only in independent expenditures prohibited under Citizens United); Thalheimer v. City of San Diego, 645 F.3d 1109 (9th Cir. 2011) (court upheld preliminary injunction against enforcement of ordinance that made it unlawful for independent committees that do not coordinate with candidates to use a contribution to support or oppose a candidate unless the contribution is attributable to an individual and does not exceed $500 per candidate per election); Long Beach Area Chamber of Commerce v. City of Long Beach, 603 F.3d 684 (9th Cir. 2010) (court struck down ordinance that provided that any person who makes independent expenditures supporting or opposing a candidate shall not accept any contribution in excess of $350 to $650, depending on the office for which the candidate is running), cert. denied, 562 U.S. 896 (2010); EMILY's List v. FEC, 581 F.3d 1 (D.C. Cir. 2009) (Kavanaugh, J.) (since contributions to and spending by a nonprofit independent expenditure organization do not corrupt a candidate or officeholder, federal regulatory limits on contributions to these organizations are unconstitutional). Dinner Table Action v. Schneider, 2025 U.S. Dist. LEXIS 134052 (D. Me. July 15, 2025) (in November 2024 Maine voters passed by ballot initiative an act that restricts individuals and entities from contributing more than $5,000 per year to any political action committee for the purpose of	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	making independent expenditures supporting or opposing a clearly identified candidate for state or local office; court struck down the restriction); Hispanic Leadership Fund, Inc. v. Walsh, 42 F. Supp. 3d 365 (N.D.N.Y. 2014) (court struck down annual $150,000 limit under New York statute on amount individuals can contribute to groups that make only independent expenditures; court also struck down annual $5,000 limit under New York statute on amount corporations can contribute to groups that make only independent expenditures); Fund for Louisiana's Future v. Louisiana Board of Ethics, 17 F. Supp. 3d 562 (E.D. La. 2014) (court enjoined application of Louisiana's statutory limitation on contributions to political committees of $100,000 every four years to an independent expenditure-only committee); New York Progress & Protection PAC v. Walsh, 17 F. Supp. 3d 319, 323 (S.D.N.Y. 2014) ("[T]he Court holds that the limitations contained in New York Election Laws §§14-114(8) and 14-126, as applied to independent expenditure-only organizations, cannot prevent *quid pro quo* corruption or its appearance, and thus violate the *First Amendment*."); Personal PAC v. McGuffage, 858 F. Supp. 2d 963 (N.D. Ill. 2012) (court enjoined enforcement of statutory contribution limits as applied to contributions to independent expenditure-only PACs, and the statutory prohibition against the establishment or maintenance of more than one PAC as applied to the establishment or maintenance of independent expenditure-	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	only PACs); Thalheimer v. City of San Diego, 2012 U.S. Dist. LEXIS 6563 (S.D. Cal. 2012) (ordinance made it unlawful for any general purpose recipient committee to use a contribution for the purpose of supporting or opposing a candidate unless the contribution is attributable to an individual in an amount that does not exceed $500 per candidate per election; court struck down ordinance as it applies to contributions to independent expenditure committees regardless of whether independent expenditures are the only expenditures that those committees make; to prevent circumvention of contribution limits by individual donors, when a committee that otherwise makes independent expenditures decides to make contributions to a candidate or party, the City may enforce the $500 contribution limit); Carey v. FEC, 791 F. Supp. 2d 121 (D.D.C. 2011) (court enjoined application of contribution limits to contributions to separate accounts maintained by nonconnected political committees for the purpose of making only independent expenditures). Note to 11 C.F.R. §114.2(b) ("Pursuant to SpeechNow.org v. FEC, 599 F.3d 686 (D.C. Cir. 2010) (en banc), and Carey v. FEC, 791 F. Supp. 2d 121 (D.D.C. 2011), corporations and labor organizations may make contributions to non-connected political committees that make only independent expenditures, or to separate accounts maintained by non-connected political committees for making only independent expenditures, notwithstanding 11 C.F.R. §114.2(b) and 11	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	C.F.R. §114.10(a). The Commission has not conducted a rulemaking in response to these cases."). FEC Advisory Opinion 2022-12, at 9 n. 48 ("Following the decision of the U.S. District Court for the District of Columbia in Carey v. FEC, 791 F. Supp. 2d 121 (D.D.C. 2011), the Commission announced that it will no longer enforce contribution limits against any nonconnected political committee for excessive and prohibited contributions received from individuals, political committees, corporations, and labor organizations, as long as the committee maintains separate bank accounts to: (1) receive such contributions for the purpose of making independent expenditures, other advertisements that refer to a federal candidate, and generic voter drives (the 'noncontribution accounts'); (2) receive source- and amount-limited contributions for the purpose of making candidate contributions; and (3) pay a percentage of the committee's administrative expenses that closely corresponds to the percentage of activity for that account. FEC Statement on Carey v. FEC: Reporting Guidance for Political Committees that Maintain a Non-Contribution Account (Oct. 5, 2011), https://www.fec.gov/updates/fec-statement-on-carey-fec/."). FEC Advisory Opinion 2012-3 (nonconnected political committee may solicit through its website and forward unlimited contributions earmarked for nonconnected	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	political committees that make only independent expenditures or earmarked for a nonconnected political committee's noncontribution account used to finance independent expenditures; committee will deposit contributions earmarked for these purposes into a bank account separate from its account that contains contributions earmarked for federal candidates); FEC Advisory Opinion 2010-11 (nonconnected political committee may solicit and accept unlimited contributions from corporations, individuals, labor organizations, and political committees for the purpose of making independent expenditures); FEC Advisory Opinion 2010-9 (nonprofit social welfare organization exempt from tax under Code Section 501(c)(4) established committee that will make only independent expenditures; committee can solicit and accept unlimited contributions from the general public, and unlimited contributions earmarked for specific independent expenditures; sponsoring organization's payment of establishment, administrative, and solicitation expenses are contributions from the sponsoring organization to the committee). Cf. Alabama Democratic Conference v. Attorney General of Alabama, 838 F.3d 1057 (11th Cir. 2016) (Alabama Campaign Practices Act prohibited any political action committee from making a contribution or expenditure to any other political action committee, and allowed contributions or expenditures to a candidate's principal campaign	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	committee; Alabama Democratic Conference ("ADC"), a grassroots political organization that supported black voters, challenged the prohibition as a constitutionally impermissible limitation on its independent expenditures; for example, the prohibition meant that its practice of placing funds that the ADC received from other PACs into a separate bank account to be used only for independent expenditures was impermissible; since the law limited contributions, the test of its validity was that the state demonstrate a sufficiently important interest, and that the law is closely drawn to serve that interest, even if there is a significant interference with political association; court upheld the law as it applied to the ADC; district court's finding that appearance of corruption concerns justified the state's decision to regulate in this area was not clearly erroneous; "An account set up for independent expenditures can pass muster under a state's interest in anti-corruption only when it is truly independent from any coordination with a candidate. To create the necessary independence, an organization must do more than merely establish separate bank accounts for candidate contributions and independent expenditures. There must be safeguards to be sure that the funds raised for making independent expenditures are really used only for that purpose. There must be adequate account-management procedures to guarantee that no money contributed to the organization for the purpose of independent expenditures will ever be placed in the wrong	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	account or used to contribute to a candidate;" in determining the adequacy of the safeguards, a court will consider the factors of the overlap of staff and resources, the lack of financial independence, the coordination of activities, and the flow of information between entities; "Beyond sufficient structural separations within the organization, it is also necessary that the same people controlling the contributions to candidates are not also dictating how the independent expenditure money is spent. And there must be more than simply naming different treasurers for different accounts. Different people must functionally control the spending decisions for the different accounts"), cert. denied sub nom. Alabama Democratic Conference v. Marshall, 137 S. Ct. 1837 (2017). (b) The court in SpeechNow.org upheld the registration and reporting requirements of 52 U.S.C. §§30101(4) and (8), 30102, 30103, and 30104(a) (formerly 2 U.S.C. §§431(4) and (8), 432, 433, and 434(a)) for a political committee that makes only independent expenditures. Under these statutory provisions, a political committee must: appoint a treasurer, §30102(a) (formerly §432(a)); maintain a separately designated bank account, §30102(b), §30102(h) (formerly §432(b), 432(h)); keep records for three years that include the name and address of any person who makes a contribution in excess of $50, §30102(c)(1)-(2), §30102(d) (formerly §432(c)(1)-(2), 432(d)); keep records for three years that include the date, amount, and purpose of any	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	disbursement and the name and address of the recipient, §30102(c)(5), §30102(d) (formerly §432(c)(5), 432(d)); register with the FEC within ten days of becoming a political committee, §30103(a) (formerly §433(a)); file with the FEC quarterly or monthly reports during the calendar year of a general election detailing cash on hand, total contributions, the identification of each person who contributes an annual aggregate amount of more than $200, independent expenditures, donations to other political committees, any other disbursements, and any outstanding debts or obligations, §30104(a)(4), 30104(b) (formerly §434(a)(4), 434(b)); file a pre-election report and a post-election report detailing the same, id.; file semiannual or monthly reports with the same information during years without a general election, id.; and file a written statement to terminate the committee, §30103(d) (formerly §433(d)). (c) The registration and reporting requirements served the governmental interest in providing the electorate with information about the sources of political campaign funds. Furthermore, disclosure requirements impose no ceiling on campaign-related activities, and do not prevent anyone from speaking. 13. (a) In FEC Advisory Opinion 2011-12, the FEC addressed the permissible level of solicitation by federal officeholders and candidates, and officers of national party committees,	

ACTIVITY	FEDERAL ELECTION CAMPAIGN ACT OF 1971, AS AMENDED ("FECA")	INTERNAL REVENUE CODE OF 1986, AS AMENDED ("I.R.C.")
STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	on behalf of independent expenditure-only political committees, otherwise known as Super PACs. (b) Federal officeholders and candidates, and officers of national party committees, cannot solicit unlimited contributions from individuals, corporations, or labor organizations on behalf of independent expenditure-only political committees. (c) Federal officeholders and candidates, and officers of national party committees, can solicit up to $5,000 from individuals (other than foreign nationals and federal contractors), and any other source not prohibited by FECA from making a contribution to a political committee, on behalf of independent expenditure-only political committees. (d) Federal officeholders and candidates cannot raise or spend funds in connection with an election for federal office unless the funds are subject to the limitations, prohibitions, and reporting requirements of FECA. 52 U.S.C. §30125(e)(1)(A) (formerly 2 U.S.C. §441i(e)(1)(A)); 11 C.F.R. §300.61. Persons subject to Section 30125(e) (formerly Section 441i(e)) also may not raise or spend funds in connection with any other election unless the funds are raised within FECA's contribution limits, and are not from prohibited sources. 52 U.S.C. §30125(e)(1)(B) (formerly 2 U.S.C. §441i(e)(1)(B)); 11 C.F.R. §300.62. Similarly,	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	national parties and their officers and agents, or a national congressional campaign committee, may not solicit, receive, direct, or spend any funds that are not subject to the limitations, prohibitions, and reporting requirements of FECA. 52 U.S.C. §30125(a)(1) (formerly 2 U.S.C. §441i(a)(1)); 11 C.F.R. §300.10(a). Section 30125 (formerly Section 441i) was upheld in McConnell v. FEC, 540 U.S. 93, 181-84 (2003), and remains valid since it was not disturbed by either Citizens United or SpeechNow. See, e.g., RNC v. FEC, 698 F. Supp. 2d 150, 156-60 (D.D.C. 2010), aff'd, 561 U.S. 1040 (2010). (e) Federal officeholders and candidates, and officers of national party committees, can attend, speak at, or be featured guests at fundraisers for independent expenditure-only committees at which unlimited individual, corporate, and labor organization contributions will be solicited. The federal officeholders and candidates, and officers of national party committees, must restrict any solicitations they make to funds subject to the limitations, prohibitions, and reporting requirements of FECA. (f) A federal officeholder or candidate can attend, speak at, or be a featured guest at fundraising events in connection with an election for federal office at which funds outside FECA's amount limitations and source prohibitions, or Levin funds, are solicited. 11 C.F.R. §300.64(a)-(b)(1). While participating in such an event, a federal officeholder	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	or candidate cannot solicit funds that are not subject to FECA's limitations, prohibitions, and reporting requirements. 11 C.F.R. §300.61. A federal officeholder or candidate who solicits funds at such an event must limit any solicitation to funds that comply with FECA's contribution limitations and source restrictions. 11 C.F.R. §300.64(b)(2). See also FEC Advisory Opinion 2024-7 (Team Graham, the principal campaign committee of Senator Lindsay Graham, may participate in a joint fundraising committee whose participants include a Super PAC as long as: (i) neither Team Graham nor any other entity established, financed, maintained, or controlled by Senator Graham nor any other entity acting on behalf of Senator Graham would solicit, receive, direct, transfer, or spend funds that do not comply with FECA's contribution limits, source prohibitions, and reporting requirements; and (ii) Senator Graham, Team Graham, and their agents would not engage in coordinated communications with the Super PAC and thereby receive an in-kind contribution from the Super PAC; Senator Graham, Team Graham, and their agents will not request or suggest that the Super PAC make any public communications aside from the joint fundraising solicitations, invitations, and similar fundraising event announcements, or assent to any request or suggestion by Super PAC concerning any such public communications); Statement of Vice-Chair Ellen L. Weintraub Regarding Advisory Opinion 2024-7 (Team Graham, Inc.) ("[T]eam Graham would have regular	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	communication with Security is Strength PAC about the candidate and campaign's solicitations and their campaign strategy as it relates to solicitations for the joint fundraising committee. The super PAC would be privy to the campaign's views on messaging and donor outreach. This presupposes an ongoing relationship between two entities that are supposed to be completely independent of each other. It is hard to fathom how that necessary independence will be maintained when the super PAC is integrated into the campaign's fundraising operations."). FEC Advisory Opinion 2015-9 (individuals who are otherwise agents of federal candidates can solicit nonfederal funds in connection with an election for federal office for an independent expenditure-only political committee that makes independent expenditures in support of Democratic candidates for the U.S. Senate, or an independent expenditure-only political committee that makes independent expenditures in support of Democratic candidates for the U.S. House of Representatives, as long as the individuals are acting on their own, not in their capacity as agents of federal candidates, and not at the request or suggestion of federal candidates; in soliciting contributions, individuals would identify themselves as raising funds only for the independent-expenditure-only committees, would not use their campaign titles or campaign resources (such as letterhead and email), and would inform potential contributors that they are making the solicitations on their	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	own and not at the direction of the federal candidates or their agents; individuals would not solicit contributions for the independent expenditure-only committees and the candidates at the same time) (under 11 C.F.R. §300.64, there is no minimum number of expected attendees before a federal candidate can permissibly speak, attend, or be featured as a special guest at an event at which nonfederal funds are raised and that is sponsored by an independent expenditure-only political committee that makes independent expenditures in support of Democratic candidates for the U.S. Senate, or an independent expenditure-only political committee that makes independent expenditures in support of Democratic candidates for the U.S. House of Representatives; the requirements of 11 C.F.R. §300.64 would otherwise have to be met; although federal candidates cannot solicit nonfederal funds, they may attend, speak, or be a featured guest at nonfederal fundraising events. 52 U.S.C. §30125(e)(1); 11 C.F.R. §300.64(a)-(b)(1); federal candidates may also solicit federal funds at these events as long as the solicitation is limited to funds that comply with FECA's amount limitations and source prohibitions. 11 C.F.R. §300.64(b); federal candidates may limit these solicitations by displaying at the fundraising event a clear and conspicuous written notice, or making a clear and conspicuous oral statement, that the solicitation does not seek nonfederal funds; to be clear and conspicuous, a written notice or oral	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	statement must not be difficult to read or hear, or placed in a manner that it is easily overlooked by any significant number of those in attendance. 11 C.F.R. §300.64(b)(2)(i); further, the name or likeness of a federal candidate or officeholder may appear in publicity for the event that includes a solicitation if the candidate or officeholder is identified as a special, honored, or featured guest, or in any other manner not specifically related to fundraising; the publicity must include a clear and conspicuous disclaimer that the solicitation is not being made by the federal candidate. 11 C.F.R. §300.64(c)(3)(A)-(B)). MUR 8238 (Truth and Courage PAC and Ted Cruz) (prior to the 2022 agreement with iHeart Media Management Services Inc., the independent expenditure only political committee owned and produced the podcast; before and after the 2022 agreement Cruz was an uncompensated co-host of the podcast and had no ownership interest in it; under the 2022 agreement, iHeart took over the production, distribution, and marketing of the podcast; other than entering into a talent inducement rider providing Cruz would continue to co-host the podcast, Cruz was not a party to the 2022 agreement, which was between iHeart, the committee, and the podcast's co-host's company; although Cruz attended one of the meetings with iHeart and his consultant attended additional discussions, the available information did not indicate that Cruz or his consultant suggested how the podcast's profits were to be allocated;	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	iHeart offered the committee a share of the podcast's net profits in recognition of its preexisting ownership of the podcast and its assets consistent with iHeart's standard commercial terms and practices; the co-host's company was entitled to a share of the revenue as a new co-owner of the podcast following execution of the agreement; Cruz's participation in the podcast appears more akin to a candidate speaking at, but not soliciting funds in connection with, an event held by an independent expenditure only committee; "Because there is no available information to indicate that Cruz solicited, directed, received, transferred, or spent the funds iHeart paid to the PAC in violation of the Act's soft money provision, the Commission dismisses the allegation that Cruz violated 52 U.S.C. §30125(e)(1)(A) and 11 C.F.R. §300.61"). See generally Note, "Working Together For An Independent Expenditure: Candidate Assistance With Super PAC Fundraising," 128 Harvard Law Review 1478, 1485-86 (2015) ("Candidates may attend Super PAC-hosted fundraisers, and may solicit contributions up to the federal limits on behalf of those groups. Candidates may use common vendors with Super PACs, such as fundraising consultants, which often raises questions about whether these vendors are improperly sharing nonpublic information between the candidates and Super PACs. Super PACs also may solicit contributions from the wealthy family and friends of a candidate above the amounts the candidate	

ACTIVITY	FEDERAL ELECTION CAMPAIGN ACT OF 1971, AS AMENDED ("FECA")	INTERNAL REVENUE CODE OF 1986, AS AMENDED ("I.R.C.")
STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	would be able to solicit directly, sometimes even using lists of potential donors supplied by the candidate.") (footnotes omitted). 14. (a) In Minnesota Citizens Concerned for Life, Inc. v. Swanson, 692 F.3d 864 (8th Cir. 2012) (en banc), the court upheld a Minnesota statutory prohibition on corporations making direct contributions to candidates. (b) The prohibition on contributions was closely drawn to match a sufficiently important governmental interest. Minnesota had the important governmental interest in avoiding quid-pro-quo corruption and the circumvention of its other limits on contributions. Under Federal Election Commission v. Beaumont, 539 U.S. 146 (2003), the prohibition on corporate contributions was constitutionally permissible, and the Court in Citizens United v. Federal Election Commission, 558 U.S. 310 (2010), left Beaumont intact. Like Minnesota's law, the challenged provision in Beaumont prohibited corporations from making election-related contributions, but allowed corporations to establish, administer, and control a PAC, through which the corporation could solicit contributions. Accord, Stop Reckless Economic Instability Caused by Democrats v. Federal Election Commission, 814 F.3d 221 (4th Cir. 2016) (court rejected challenge to FECA's annual limits on contributions by multicandidate political	

ACTIVITY	FEDERAL ELECTION CAMPAIGN ACT OF 1971, AS AMENDED ("FECA")	INTERNAL REVENUE CODE OF 1986, AS AMENDED ("I.R.C.")
STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	committees ("MPCs") to national party committees of $15,000 and state party committees and their local affiliates of $5,000 as violating the equal protection component of the Fifth Amendment's Due Process Clause insofar as political committees that have not yet completed the six month waiting period for MPC status but have satisfied the other criteria for this status enjoy the higher limits of $32,400 and $10,000, respectively; the decrease in the amount of contributions that political committees, once they become MPCs, can make annually to national party committees and state party committees and their local affiliates is more than counteracted by the increase in the limits in the amount of contributions that MPCs can make to individual candidates (from $2,600 to $5,000); the difference in treatment favors the MPCs in that the total amount of money MPCs can contribute overall will be substantially greater since there are so many different individual candidates to which the MPCs can contribute); Iowa Right to Life Committee, Inc. v. Tooker, 717 F.3d 576 (8th Cir. 2013) (Iowa statute prohibited direct corporate contributions to a candidate, a candidate's committee, or a political committee; prohibition was constitutional under Citizens United and Beaumont), petition for rehearing and petition for rehearing en banc denied, 2013 U.S. App. LEXIS 14824 (8th Cir. 2013), cert. denied, 572 U.S. 1046 (2014); United States v. Danielczyk, 683 F.3d 611 (4th Cir. 2012) (ban on direct contributions by corporations continued in effect under Citizens United and	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	Beaumont; test of constitutionality was whether the ban was closely drawn to match a sufficiently important government interest; prevention of actual and perceived corruption and the threat of circumvention were firmly established government interests that support regulations on campaign financing), cert. denied, 568 U.S. 1193 (2013); Ognibene v. Parkes, 671 F.3d 174, 184 (2d Cir. 2012) (court upheld ban on contributions by corporations, partnerships, LLCs, and LLPs; under Beaumont anticorruption interest and prevention of opportunity for an individual donor to circumvent valid contribution limits justified ban), cert. denied, 567 U.S. 935 (2012); Thalheimer v. City of San Diego, 645 F.3d 1109 (9th Cir. 2011) (court upheld denial of preliminary injunction against enforcement of ordinance that prohibited any person other than an individual from contributing to a candidate or candidate-controlled committee; Beaumont continued in effect after Citizens United, and prohibition was closely drawn to the government interest of preventing the circumvention of individual contribution limits; prohibition left individual members of corporations free to make their own contributions and deprived the public of little or no material information; nonindividual entities could make unlimited independent expenditures and unlimited contributions to independent committees that can fund expenditures supporting or opposing candidates); In re Cao, 619 F.3d 410, 423 (5th Cir. 2010) (en banc) (Supreme Court's	

ACTIVITY	FEDERAL ELECTION CAMPAIGN ACT OF 1971, AS AMENDED ("FECA")	INTERNAL REVENUE CODE OF 1986, AS AMENDED ("I.R.C.")
STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	decision in Citizens United does not provide any reason to change our analysis of the validity of the contribution limits under federal law on political organizations); Green Party of Connecticut v. Garfield, 616 F.3d 189 (2d Cir. 2010) (court, relying on anticorruption rationale of Beaumont, upheld statute that prohibited contributions by state contractors, prospective state contractors, principals of state contractors, and the spouses and dependent children of state contractors; court struck down statute that prohibited contributions by lobbyists because recent corruption scandals had nothing to do with lobbyists, and there was insufficient evidence to infer that all contributions made by state lobbyists gave rise to an appearance of quid-pro-quo corruption; evidence demonstrating that lobbyist contributions gave rise to an appearance of influence had no bearing on whether prohibition was closely drawn to the state's interest in preventing quid-pro-quo corruption; a limit on lobbyist contributions would adequately address the state's interest in combating corruption and the appearance of corruption by lobbyists); Thalheimer v. City of San Diego, 2012 U.S. Dist. LEXIS 6563 (S.D. Cal. 2012) (court, relying on anticorruption rationale of Beaumont, upheld ban on contributions to candidates by nonindividuals other than political parties); King Street Patriots v. Texas Democratic Party, 521 S.W.3d 729 (Tex. 2017) (ban on corporations from making political contributions under Texas Election	

ACTIVITY	FEDERAL ELECTION CAMPAIGN ACT OF 1971, AS AMENDED ("FECA")	INTERNAL REVENUE CODE OF 1986, AS AMENDED ("I.R.C.")
STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	Code was constitutional under Citizens United and Beaumont). See also United States v. Emmons, 8 F.4th 454 (6th Cir. 2021) (court upheld convictions for knowingly and willingly making unlawful corporate contributions aggregating $25,000 or more under 52 U.S.C. §§30109(d)(1)(A)(i) and 30118(a); father of Democratic candidate challenging Mitch McConnell in 2014 election for United States Senate seat from Kentucky used funds from his wholly-owned corporation to pay for consulting services and third-party vendors to his daughter's campaign, and to reimburse expenses incurred by consultant in providing services to the campaign; "Just because a family member can choose to contribute to a candidate based on the familial relationship does not mean that the family member could not also contribute to the candidate for the purpose of receiving a quid pro quo. . . . In the same way that intrafamilial contributions present a risk of quid pro quo corruption, contributions from a closely-held family run corporation pose a risk of quid pro quo corruption through the use of campaign contributions to secure political benefits for the corporation, and a risk of circumvention of the individual contribution limits. . . . [G]iven that intrafamilial contributions can be constitutionally restricted, there is no concern regarding speech discrimination based on the 'speaker's corporate identity,' and no basis to treat these contributions any differently from other corporate	

ACTIVITY	FEDERAL ELECTION CAMPAIGN ACT OF 1971, AS AMENDED ("FECA")	INTERNAL REVENUE CODE OF 1986, AS AMENDED ("I.R.C.")
STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	contributions, or contributions generally for that matter"), cert. denied sub nom. Lundergan v. United States, 2022 WL 1295718 (May 2, 2022) (Mem). See generally Richard Briffault, "The Surprising Survival - So Far - of the Corporate Contribution Ban," 3 University of Chicago Business Law Review 397 (2024). (c) A majority of the court in Minnesota Citizens Concerned for Life also held that Minnesota's statutory requirement that all associations make independent expenditures through an independent expenditure political fund is most likely unconstitutional. (d) Minnesota defined an independent expenditure as: an expenditure expressly advocating the election or defeat of a clearly identified candidate, if the expenditure is made without the express or implied consent, authorization, or cooperation of, and not in concert with or at the request or suggestion of, any candidate or any candidate's principal campaign committee or agent. Minn. Stat. §10A.01, subdiv. 18. (e) Minnesota then required corporations wishing to make independent expenditures to either "form[] and register[] an independent expenditure political fund if the expenditure is in excess of $100 or [contribute to an] existing independent expenditure political committee or political fund." Id.	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	§10A.12, subdiv. 1a; see also Minn. Stat. §211B.15, subdiv. 3. (f) If a corporation chooses to establish a political fund, then the corporation and its political fund are subject to a series of statutory requirements. The corporation must first appoint a treasurer for the political fund, and the treasurer must then register the fund within fourteen days by filling out a two-page form disclosing a list of all the fund's depositories, and the names and addresses of the fund, treasurer, and any deputy treasurers. Id. §§10A.12, subdiv. 3, 10A.14, subdivs. 1, 2. The political fund must also segregate its funds from any other funds. Id. §10A.12, subdiv. 2. If a corporation is the sole donor to its fund, the corporation can segregate funds with an internal bookkeeping device, such as a spreadsheet. (g) Once established, the political fund must file periodic, detailed reports: The fund must file five reports during a general-election year and one report during a non-general-election year. Minn. Stat. §10A.20. The report must disclose: the amount of liquid assets at the beginning of a reporting period; the name and address of each individual or association whose contributions within the year exceed $100; the amount and date of these contributions; the sum of contributions during the reporting period; each loan made or received that	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	exceeds $100; the name and address of the lender; receipts over $100 during the reporting period not otherwise listed; the sum of those receipts; the name and address of each individual or association to whom the reporting entity made expenditures within the year exceeding $100; the sum of all expenditures made by the reporting entity during the reporting period; the name and address of each political committee, political fund, principal campaign committee, or party unit to which contributions in excess of $100 were made; the sum of all contributions; the amount and nature of any advance of credit incurred; the name and address of each individual or association to whom noncampaign disbursements have been made that aggregate in excess of $100 and the purpose of each noncampaign disbursement; the sum of all noncampaign disbursements; and the name and address of a nonprofit corporation that provides administrative assistance to the political committee or political fund. Minn. Stat. §10A.20. (h) If the political fund has not received or expended money during a designated reporting period, the treasurer must file a statement of inactivity. Minn. Stat. §10A.20, subdiv. 7. (i) The treasurer for a political fund must keep certain records and make them available for an audit. Id. §10A.13. Finally, if a political fund wants to dissolve, it must settle its debts, dispose of its remaining assets, and file a termination report. Id. §10A.24. One method by which a political fund	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	can dispose of its assets is by returning contributions to their sources. Id. §211B.12; §10A.01, subdiv. 26(2). (j) If a corporation chooses to contribute to an existing political fund, then the corporation is subject to fewer statutory requirements. A for-profit corporation need only provide its name and address for contributions made from its general treasury. A non-profit corporation would also need to disclose information regarding the underlying source of the contribution if the corporation contributed more than $5,000 to a political fund or committee. Similarly, a corporation that solicits and receives contributions for a political fund must disclose the source of the contributions. (k) A majority of the court held that Minnesota failed to show a substantial relation between the identified interests and the ongoing reporting requirements. The ongoing reporting requirements are initiated upon a $100 aggregate expenditure, and does not match any sufficiently important disclosure interest. Once initiated, the requirements are potentially perpetual regardless of whether the association ever again makes an independent expenditure. The reporting requirements end only if the association dissolves the political fund. To dissolve the political fund, the association must first settle the political fund's debts, dispose of its assets valued in excess of $100–including physical assets and credit balances–and file a termination report with the Minnesota Campaign Finance and Public	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	Disclosure Board. The association's constitutional right to speak through independent expenditures dissolves with the political fund. To speak again, the association must initiate the bureaucratic process again. Cf. Yamada v. Snipes, 786 F.3d 1182, 1199 n. 9 (9th Cir. 2015) ("The reporting requirements of Hawaii law are more narrowly tailored than the 'onerous' and 'potentially perpetual' reporting requirement preliminarily enjoined in *Minnesota Citizens Concerned for Life, Inc. v. Swanson, 692 F.3d 864, 873-74 (8th Cir. 2012)* (en banc). In Minnesota, an organization must register as a political committee once it spends $100 in the aggregate on political advocacy, and once registered, it must 'file five reports during a general election year' even if the committee makes no further expenditures. *Id. at 873, 876; see also Iowa Right to Life Comm., Inc. v. Tooker, 717 F.3d 576, 596-98 (8th Cir. 2013)* (striking down Iowa's ongoing reporting requirements that were untethered to any future political spending). We do not agree that such reporting requirements are 'onerous' as a general matter. *See Human Life, 624 F.3d at 1013-14.* Moreover, unlike in Minnesota, an organization need not register as a noncandidate committee in Hawaii until it crosses the $1,000 threshold for a two-year election cycle, *see HRS §11-321(g)*, and a committee with aggregate contributions and expenditures of $1,000 or less in any subsequent election cycle need only file a single, final election-period report, *see HRS §11-326.* Hawaii's	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	reporting regime is thus contingent on an organization's ongoing contributions and expenditures, reflecting its closer tailoring to Hawaii's informational interest than Minnesota's analogous regime."), cert. denied sub nom. Yamada v. Shoda, 577 U.S. 1007 (2015). (l) Minnesota can accomplish any disclosure-related interests–providing the electorate and shareholders information concerning the source of corporate political speech, deterring corruption, and detecting violations of campaign finance laws–through less problematic measures, such as requiring reporting whenever money is spent, as the law already requires of individuals. (m) Furthermore, the federal disclosure requirements for electioneering communications upheld in Citizens United were much different from the disclosure requirements of the Minnesota statutes: The federal law required filing a disclosure report only when a corporation (or anyone else) spent more than $10,000 on electioneering communications (e.g., a television commercial) during any calendar year. See §434(f)(4) and (g) [now §30104(f)(4) and (g)]. Then, when a communication disclosed "____ is responsible for the content of this advertising," as required by §441d(d)(2), a citizen could identify the responsible party in public records and discover relevant information. See Citizens United, 558	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	U.S. at 368-71. This event-driven reporting requirement ended as soon as the report was filed. See §434(f)(4) and (g)(1) and (2) [now §30104(f)(4) and (g)(1)]. The effect of the laws–requiring one-time disclosure only when a substantial amount of money was spent–matched the government's disclosure purpose. In contrast, the effect of Minnesota's ongoing reporting requirements, which are initiated upon $100 aggregate in expenditures, and are unrelated to future expenditures, does not match any particular disclosure interest. Other requirements, such as requiring a treasurer, segregated funds, and record-keeping, also are only tangentially related to disclosure. [692 F.3d at 875 n. 9] (n) Three dissenting judges argued that Minnesota's carefully crafted disclosure laws protected the public interest of the voting public's right to know where the money is coming from. First, the laws do not require an association to speak through another entity to engage in campaign-related speech. A corporation does not need to be a separate association from a political fund that it establishes. Rather, it can retain full control over the operations of a political fund that it creates, including by appointing a corporate employee or officer as the fund's treasurer and by directing the political fund to return any excess contributions and dissolve. Second, a corporation can contribute an unlimited	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	amount directly to its political fund, and the political fund can use these contributions to make expenditures. (o) The state had three important interests. First, it had the interest in providing the voting public with information about which associations and corporations support particular issues and candidates. Second, shareholders have an important interest, both politically and from a business perspective, in knowing about a corporation's campaign-related speech. Disclosure allows shareholders to determine whether their corporation's political speech advances the corporation's interest in making profits, and citizens can see whether elected officials are in the pocket of so-called money interests. (p) Third, disclosure requirements serve an important means of gathering the data necessary to detect violations of campaign finance laws. The ongoing reporting requirement allows the state to easily monitor compliance with its disclosure laws and obtain more complete information on political contributions and expenditures. (q) The burdens of compliance were not onerous. A corporation can appoint an employee or officer as treasurer of its political fund. The fund itself can be as simple as an internal bookkeeping device that separates and tracks contributions and expenditures. This internal bookkeeping	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	option significantly limits the cost of complying with Minnesota's regulations. (r) Finally, the $100 reporting threshold was not wholly without rationality. The ongoing reporting requirements were neither heavy nor out of proportion with the state's important interest in disclosure. See SpeechNow.Org v. Federal Election Commission, 599 F.3d 686, 696-98 (D.C. Cir. 2010) (en banc) (upholding 52 U.S.C. §30104(a)(4) (formerly 2 U.S.C. §434(a)(4)), which requires political committees to file quarterly reports, a pre-election report, and a post-election report in election years; and either semiannual or monthly reports during nonelection years), cert. denied sub nom. Keating v. Federal Election Commission, 562 U.S. 1003 (2010). 15. (a) In Vermont Right to Life Committee, Inc. v. Sorrell, 758 F.3d 118 (2d Cir. 2014), cert. denied, 574 U.S. 1074 (2015), the court addressed the prohibition on coordination by an independent expenditure committee when a Section 501(c)(4) corporation maintained a PAC with its own bank account, and an independent expenditure-only committee with a separate own bank account. For the independent expenditure-only committee to be respected as such and obtain the protection of Citizens United, the corporation had to maintain a degree of organizational and functional	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	separation between each committee's activities and the accounts that funded these activities. (b) The court held that, at a minimum, there must be some organizational separation to lessen the risks of coordinated expenditures. Separate bank accounts and organizational documents, by themselves, did not ensure that information and funds would be used only for independent expenditures. Whether one entity was functionally separate from a nonindependent expenditure-only entity depended on factors such as overlap of staff and resources, the lack of financial independence, the coordination of activities, and the flow of information between the entities. 758 F.3d at 142. (c) The court found that the two committees were not meaningfully distinct. First, the corporation transferred funds from the PAC account to the independent expenditure account if the independent expenditure committee lacked the resources to engage in a certain activity. In addition, the committees used the PAC's money to fund the independent expenditure committee's primary activity of producing voter guides when the independent expenditure committee lacked the funding. In 2008, participants in a PAC meeting discussed a joint fundraising goal in combined funds of both committees. (d) Second, the corporation had complete control over each committee's structure and finances. The members of both	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	committees were appointed by the president of the corporation with the approval of its board. The committees shared a substantial overlap in membership. They met at the same time and same place, and often discussed important tactical campaign issues with no regard for the separation of the two committees. The Executive Director of the corporation and its principal official, Mary Hahn Beerworth, was also an ex-officio member of the independent expenditure committee. She attended the meetings of both committees, and advised both committees. The chair of the PAC, Michelle Morin, was also a member of the corporation's board and a member of the independent expenditure committee. (e) Third, the independent expenditure committee's primary purpose was the production of voter guides describing the pro-life positions of candidates in each county in Vermont. This activity was done in concert with the PAC. Together the two groups produced and paid for the guides, which often listed both groups as sponsors. The PAC in turn based its endorsement decisions on these voter guides. Beerworth and Morin then decided whether to provide the candidates that the PAC endorsed with access to the corporation's support phone mailing list. There was no point at which the independent expenditure committee separated itself from the lines of communication between the candidate, the corporation, and the PAC.	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	(f) Fourth, in 2010, Beerworth advised Brian Dubie (the PAC endorsed Dubie in every election in which he ran), the Republican candidate for Governor, and members of his campaign staff on issues. That same year, the Dubie campaign accepted more than $900 worth of the corporation's phone lists as an in-kind contribution. Compare Brittney Wozniak, "Do Super PACs Forfeit First Amendment Rights When They Restructure as Hybrid PACs? The Implications of Vermont Right to Life Committee, Inc. v. Sorrell," 77 University of Pittsburgh Law Review 411, 435 (Spring 2016) ("The VRLC [Vermont Right to Life Committee, Inc.] is policy-oriented and does not seek to elect a particular politician. Policy-oriented committees like the VRLC must engage in multiple forms of advocacy to communicate effectively and lobby their policies. Successfully and efficiently achieving this requires organizational and staff overlap. By rejecting organizational enmeshment and staff sharing, the court is requiring that two separate, formal entities be formed. This effectively bans hybrid PACs. These organizations need overlap for communications and support in order to reap the benefits of structuring in this mixed-entity form; to require otherwise renders them obsolete. In fact, hybrid PACs that have been upheld have organizational and staff overlap, particularly with high-level employees.") (footnotes omitted) with Brian Greivenkamp, "If I Go Crazy, Then Will You Still Call Me	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	a Super PAC? How Enmeshment with Political Action Committees Makes Contribution Limits Enforceable on Independent Expenditure-Only Committees," 83 University of Cincinnati Law Review 1445, 1459-60, 1465 (Summer 2015) ("At no point in the court's opinion [in Vermont Right to Life Committee v. Sorrell] did it make any explicit statement that functional indistinguishableness is the sum of financial and organizational enmeshment. From its previous discussions, this equation may feel implied and even intuitive, but the court's failure to expressly define the elements of the equation may be the largest and most important ambiguity in its holding. For example, the court never says whether both types of enmeshment are essential for a group to be functionally indistinguishable. It seems logical that two groups could be functionally indistinguishable if the boards were entirely different, yet there existed a fluidity of funds and joint fundraising goals. Likewise, two groups that kept entirely separate funds but were composed of the same board members and had unbroken lines of communication could just as easily be believed to be functionally indistinguishable.") ("The only caveat to the holding's overall success is that it fails to set down a fully articulated test regarding what constitutes functional indistinguishableness. Even so, the court does provide examples of what sorts of enmeshment constitute functional indistinguishableness as well as examples of what sorts of activities constitute each type of enmeshment.	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	Therefore, short of a definitive test, the Second Circuit at least set down repeatable guidelines for future courts to follow and reproduce.") and Francis Straub IV, "When Are Independent Expenditures Not Independent? Regulation of Campaign Finance Entities After Citizens United," 120 Penn State Law Review 315, 334 (Summer 2015) ("To alleviate the quid pro quo corruption concerns that arise with coordinated expenditures, it would be desirable to have separate individuals or entities in charge of expenditure decisions for closely associated political committees and independent expenditure organizations. Without such separation, it is eminently possible that the two entities' shared management will not show proper respect to the necessary separation between the organizations.") (footnotes omitted). See also Alabama Democratic Conference v. Attorney General of Alabama, 838 F.3d 1057 (11th Cir. 2016) (Alabama Fair Campaign Practices Act prohibited any political action committee from making a contribution or expenditure to any other political action committee, and allowed contributions or expenditures to a candidate's principal campaign committee; Alabama Democratic Conference ("ADC"), a grassroots political organization that supported black voters, challenged the prohibition as a constitutionally impermissible limitation on its independent expenditures; for example, the prohibition meant that its practice of placing funds that the ADC received from other	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	PACs into a separate bank account to be used only for independent expenditures was impermissible; since the law limited contributions, the test of its validity was that the state demonstrate a sufficiently important interest, and that the law is closely drawn to serve that interest, even if there is a significant interference with political association; court upheld the law as it applied to the ADC; district court's finding that appearance of corruption concerns justified the state's decision to regulate in this area was not clearly erroneous; "An account set up for independent expenditures can pass muster under a state's interest in anti-corruption only when it is truly independent from any coordination with a candidate. To create the necessary independence, an organization must do more than merely establish separate bank accounts for candidate contributions and independent expenditures. There must be safeguards to be sure that the funds raised for making independent expenditures are really used only for that purpose. There must be adequate account-management procedures to guarantee that no money contributed to the organization for the purpose of independent expenditures will ever be placed in the wrong account or used to contribute to a candidate;" in determining the adequacy of the safeguards, a court will consider the factors of the overlap of staff and resources, the lack of financial independence, the coordination of activities, and the flow of information between entities; "Beyond sufficient structural separations within the organization, it is also	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	necessary that the same people controlling the contributions to candidates are not also dictating how the independent expenditure money is spent. And there must be more than simply naming different treasurers for different accounts. Different people must functionally control the spending decisions for the different accounts"), cert. denied sub nom. Alabama Democratic Conference v. Marshall, 137 S. Ct. 1837 (2017); Catholic Leadership Coalition of Texas v. Reisman, 764 F.3d 409, 444 (5th Cir. 2014) (court rejected an as-applied challenge to statutory prohibition on corporate contributions when Section 501(c)(4) organization wished to contribute an email mailing list to a hybrid PAC that made contributions to candidates and independent expenditures; state was permitted to require reasonable safeguards to ensure that the email mailing list would be used only to distribute independent expenditure advertisements, and thereby ensure that the limitations on contributions by corporations to candidates and PACs that contributed to candidates were not circumvented; "The Plaintiffs failure to so explain any actual safeguards beyond potentially opening a separate bank account to deposit contributions raised with the email list is dispositive of their as-applied challenge. Though we do not weigh in on the precise safeguards that must be present (such as a segregated hard money account or the like) – or whether any level of safeguards is sufficient – before a state lacks a sufficient anticorruption interest to regulate contributions to a hybrid PAC earmarked for	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	independent expenditures, we hold that the state's interest in preventing *quid pro quo* corruption and its appearance permits the state to insist, at the very least, that there is *some* safeguard before permitting the contributions of items of fungible value. The state need not trust solely in its disclosure regulations and a committee's good faith to prevent *quid pro quo* corruption and its appearance"). But see Republican Party of New Mexico v. King, 741 F.3d 1089, 1097-98 (10th Cir. 2013) (no anticorruption interest is furthered as long as a hybrid PAC maintains an account segregated from its candidate contributions); EMILY's List v. FEC, 581 F.3d 1, 11-12 (D.C. Cir. 2009) (Kavanaugh, J.) (a nonprofit organization that makes expenditures to support federal candidates does not forfeit its First Amendment rights when it also makes contributions to candidates and parties; rather, to avoid circumvention of individual contribution limits by donors, the organization must ensure that its contributions to candidates and parties come from a hard-money account); North Carolina Right to Life, Inc. v. Leake, 525 F.3d 274, 294 n. 8 (4th Cir. 2008) (court rejected argument that NCRL-FIPE was not an independent expenditure committee because it was closely intertwined with NCRL and NCRL-PAC; while NCRL-FIPE shared staff and facilities with its sister and parent entities, its separate corporate identity rendered it independent as a matter of law); Carey v. Federal Election Commission, 791 F. Supp. 2d 121, 135 (D.D.C. 2011) ("As long as Plaintiffs	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	strictly segregate these funds [for contributions to federal candidates and party committees] and maintain the statutory limits on soliciting and spending hard money, they are free to seek and expend unlimited soft money funds geared toward independent expenditures."); FEC Advisory Opinion 2010-9 (Club for Growth, Inc. could have both a traditional PAC and an independent expenditure-only committee that solicited and accepted unlimited contributions from the general public; Club could pay the independent expenditure committee's establishment, administrative, and solicitation expenses; treasurer of the PAC could also serve as the treasurer of the independent expenditure committee when the independent expenditure committee would not engage in coordinated activity). THE PROGENY OF WISCONSIN RIGHT TO LIFE AND CITIZENS UNITED FOR DISCLOSURE REQUIREMENTS FOR EXPRESS ADVOCACY, ELECTIONEERING COMMUNICATIONS, AND BALLOT MEASURE ADVOCACY 16. (a) Courts have largely upheld disclosure requirements for contributions to and expenditures by organizations that engage in express advocacy, electioneering communications, and ballot measure advocacy. Courts have found that the disclosure requirements satisfy the constitutional test of exacting scrutiny, which prior to Americans for Prosperity Foundation v. Bonta, 141 S. Ct.	

ACTIVITY	FEDERAL ELECTION CAMPAIGN ACT OF 1971, AS AMENDED ("FECA")	INTERNAL REVENUE CODE OF 1986, AS AMENDED ("I.R.C.")
STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	2373 (2021), required a substantial relation between the disclosure requirement and a sufficiently important governmental interest. The sufficiently important governmental interest is to inform the electorate so it can make informed decisions on candidates and ballot measures. Under this test, courts have struck down disclosure requirements when: (i) the definition of the communications covered is overbroad, North Carolina Right to Life, Inc. v. Leake, 525 F.3d 274 (4th Cir. 2008); (ii) the requirements unduly burden issue advocacy, Coalition For Secular Government v. Williams, 815 F.3d 1267 (10th Cir. 2016), cert. denied, 137 S. Ct. 173 (2016); Wisconsin Right to Life, Inc. v. Barland, 751 F.3d 804 (7th Cir. 2014); Sampson v. Buescher, 625 F.3d 1247 (10th Cir. 2010); New Mexico Youth Organized v. Herrera, 611 F.3d 669 (10th Cir. 2010); Americans for Prosperity v. Grewal, 2019 WL 4855853 (D.N.J. Oct. 2, 2019) (unpublished opinion); Citizens Union v. Attorney General, 408 F. Supp. 3d 478 (S.D.N.Y. 2019); or (iii) compliance with the requirements is unduly burdensome, especially for small organizations that engage in limited express advocacy, Iowa Right to Life Committee, Inc. v. Tooker, 717 F.3d 576 (8th Cir. 2013), petition for rehearing and petition for rehearing en banc denied, 2013	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	U.S. App. LEXIS 14824 (8th Cir. 2013), cert. denied, 572 U.S. 1046 (2014); Minnesota Citizens Concerned for Life, Inc. v. Swanson, 692 F.3d 864 (8th Cir. 2012) (en banc); Sampson v. Buescher, 625 F.3d 1247 (10th Cir. 2010); Canyon Ferry Road Baptist Church v. Unworthy, 556 F.3d 1021 (9th Cir. 2009); Center for Civic Action v. City of Albuquerque Board of Ethics and Campaign Practices, 2025 WL 3485749 (D.N.M. Dec. 4, 2025). See generally Benjamin Barr & Stephen R. Klein, "Publius Was Not a PAC: Reconciling Anonymous Political Speech, the First Amendment, and Campaign Finance Disclosure," 14 Wyoming Law Review 253 (2014); Richard Briffault, "Two Challenges for Campaign Finance Disclosure After Citizens United and Doe v. Reed," 19 William & Mary Bill of Rights Journal 983 (2011); Kristy Eagan, "Dark Money Rises: Federal and State Attempts to Rein in Undisclosed Campaign-Related Spending," 40 Fordham Urban Law Journal 801 (Dec. 2012); Jennifer A. Heerwig & Katherine Shaw, "Through a Glass, Darkly: The Rhetoric and Reality of Campaign Finance Disclosure," 102 Georgetown Law Journal 1443 (2014); Lear Jiang, "Disclosure's Last Stand? The Need to Clarify the 'Informational Interest' Advanced by Campaign Finance Disclosure," 119 Columbia Law Review 487 (March 2019); Anthony Johnstone, "A Madisonian Case for Disclosure," 19 George Mason Law Review 413 (2012); Trevor Potter & Bryson B. Morgan, "The History of Undisclosed Spending in U.S. Elections &	

ACTIVITY	FEDERAL ELECTION CAMPAIGN ACT OF 1971, AS AMENDED ("FECA")	INTERNAL REVENUE CODE OF 1986, AS AMENDED ("I.R.C.")
STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	How 2012 Became the 'Dark Money' Election," 27 Notre Dame Journal of Legal Ethics & Public Policy 383 (2013); Linda Sugin, "Politics, Disclosure, and State Law Solutions for 501(c)(4) Organizations," 91 Chicago-Kent Law Review 895 (2016); Eric Wang, "Staring at the Sun: An Inquiry into Compulsory Campaign Finance Donor Disclosure Laws," Cato Institute Policy Analysis (Dec. 14, 2017). (b) In Americans for Prosperity Foundation v. Bonta, 141 S. Ct. 2373 (2021), in a majority opinion written by Chief Justice Roberts, the Court held that exacting scrutiny means a law must be narrowly tailored to serve a sufficiently important governmental interest. Exacting scrutiny requires a fit that is not necessarily perfect, but reasonable. A substantial relation is necessary but not sufficient, and the challenged requirement must also be narrowly tailored to the interest it promotes. (c) In Bonta, the Attorney General of California by regulation required charitable organizations renewing their registration to file copies of their Internal Revenue Service Form 990 as a condition of being able to solicit contributions in the state. Schedule B of this form required the organizations to disclose the names and addresses of donors who contributed more than $5,000 in a taxable year. (d) The Court applied exacting scrutiny and struck down this requirement as facially invalid under the First Amendment	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	as a violation of a charitable organization's freedom of association. The disclosure requirement created an unnecessary risk of a chilling effect on donors by indiscriminately sweeping up the information of every major donor with reason to remain anonymous. California was unable to ensure the confidentiality of donors' information, and donors and potential donors would be reasonably justified in a fear of disclosure. The plaintiff organizations introduced evidence that they and their supporters were subjected to bomb threats, protests, stalking, and physical violence. (e) Exacting scrutiny requires that there be a substantial relation between the disclosure requirement and a sufficiently important government interest, and that the disclosure requirement be narrowly tailored to the interest it promoted. The Court found, "The upshot is that California casts a dragnet for sensitive donor information from tens of thousands of charities each year, even though that information will become relevant in only a small number of cases involving filed complaints. California does not rely on Schedule Bs to initiate investigations, and in all events, there are multiple alternative mechanisms through which the Attorney General can obtain Schedule B information after initiating an investigation." 141 S. Ct. at 2387. (f) The Court also held, "[C]alifornia's demand for Schedule Bs cannot be saved by the fact that donor information is	

ACTIVITY	FEDERAL ELECTION CAMPAIGN ACT OF 1971, AS AMENDED ("FECA")	INTERNAL REVENUE CODE OF 1986, AS AMENDED ("I.R.C.")
STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	already disclosed to the IRS as a condition of federal tax-exempt status. For one thing, each governmental demand for disclosure brings with it an additional risk of chill. For another, revenue collection efforts and conferral of tax-exempt status may raise issues not presented by California's requirement, which can prevent charities from operating in the State altogether." 141 S. Ct. at 2387 (g) Justice Sotomayor, in a dissent joined in by Justices Breyer and Kagan, argued that the majority failed to recognize the importance of the government interest at issue. The government had a sufficiently important interest in the effective operation of state agencies. Audit letters and subpoenas could alert charities to an investigation and lead them to hide assets and destroy documents. The government's interest in preventing persons and entities under investigation from engaging in this conduct was sufficiently important to require charities to disclose their donors. 141 S. Ct. at 2401-02. See generally Bradley A. Smith, "Americans for Prosperity Foundation v. Bonta: A First Amendment for the Sensitive," Cato Supreme Court Review 63, 88 (2020-2021) ("Buckley differentiated NAACP and its progeny from the campaign finance disclosure provisions of FECA by noting three compelling state interests: enforcement, prevention of corruption, and a narrow informational interest in knowing the organizations a candidate was most likely to prioritize.	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	Those interests simply were not present in AFPF, but presumably they still are when the state demands disclosure of contributions to political campaigns."). Bradley A. Smith, Institute for Free Speech, "Americans for Prosperity Foundation v. Bonta: Questions and Answers," at 4-5 and 7 (Aug. 2021) ("[A] compulsory disclosure law that is not narrowly tailored is unconstitutional without a specific showing of threats, boycotts, or harassment. But even if a statute or policy meets the narrow tailoring requirement, an organization may be granted relief – specific to the organization's circumstance – by demonstrating a record or high probability of threats, boycotts, harassment, or violence. If the law or policy is not narrowly tailored, such evidence is not required.") ("The ruling does not throw all campaign finance disclosure laws into doubt and, indeed, does not question the bona fides of core campaign finance disclosure: the compelled disclosure of large contributions to PACs, political parties, and candidate campaigns. It does, however, cast further doubt on already constitutionally dubious efforts to expand compulsory disclosure into the realm of issue speech, grassroots advocacy, and the general discussion of public affairs, even if such discussion relates to candidates.") ("It is hard to say how the courts would respond to a challenge to the IRS's Schedule B filing requirement. Such a challenge would now be analyzed under the AFPF framework, meaning the IRS would have to show an important need for the information and that the	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	demand was narrowly tailored. However, as 501(c)(3) donors claim a tax deduction, the IRS would likely argue that the information is needed to ensure tax compliance – i.e., that the donations claimed by individual filers are actually received by charities. Given the potential revenue consequences, and a more direct connection between the information sought and the potential fraud than existed under California's policy, courts might still uphold the rule, as the majority appears to suggest.") (available at https://www.ifs.org/research/afpf-v-bonta-primer/). Emma Waitzman, "Free Ride on the Freedom Ride: How 'Dark Money' Nonprofits Are Using Cases From the Civil Rights Era to Skirt Disclosure Laws," 100 Texas Law Review 115, 150 (Nov. 2021) ("The ruling in Bonta differs from precedent by starting with a tailoring analysis rather than assessing burden, as was the approach in NAACP v. Alabama and its progeny. As Justice Sotomayor stated in her dissent, the majority 'depart[ed] from the traditional, nuanced approach to First Amendment challenges, whereby the degree of means-end tailoring required is commensurate to the actual burden on associational rights.' By applying a heightened level of tailoring, 'no matter if the burdens . . . are slight, heavy, or nonexistent,' the Bonta decision will have the practical effect of making it easier for dark money nonprofits to eliminate disclosure requirements.") (footnotes omitted).	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	(h) The court in Gaspee Project v. Mederos, 13 F.4th 79 (1st Cir. 2021), cert. denied, 142 S. Ct. 2647 (2022) (discussed in Paragraph 24 below), applied the narrow tailoring requirement and upheld Rhode Island's statutory disclosure and disclaimer scheme for independent expenditures and electioneering communications. (i) The court in No on E v. Chiu, 85 F.4th 493 (9th Cir. 2023), cert. denied, 220 L. Ed. 2d 10 (2024) (discussed in Paragraph 25 below), applied exacting scrutiny, as interpreted by the Supreme Court in Americans for Prosperity Foundation v. Bonta, 141 S. Ct. 2373 (2021), and denied a motion for preliminary injunction to enjoin enforcement of a San Francisco ordinance that required a disclaimer of secondary-contributors. The disclaimer required certain committees in their political advertisements to list the major donors (the secondary contributors) to the top contributors (the primary contributors) to their committees. The court held that this requirement: (i) was substantially related to the important governmental interest in informing voters of the source of funding for election-related communications; (ii) did not create an excessive burden on First Amendment rights relative to that interest; and (iii) was narrowly tailored to the governmental interest. (j) The court in Americans For Prosperity v. Meyer, 2026 WL 2934861 (9th Cir. Sept. 30, 2026) (discussed in Paragraph 26 below), relied on No on E and applied	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	exacting scrutiny, as interpreted by the Supreme Court in Americans for Prosperity Foundation v. Bonta, 141 S. Ct. 2373 (2021), to uphold the uphold the reporting and disclosure provisions of Proposition 211, otherwise known as the Voters' Right to Know Act, passed by Arizona voters in the November 2022 election. Proposition 211 required disclosure of the original source of campaign media contributions and their intermediaries. (k) The court in Smith v. Helzer, 95 F.4th 1207 (9th Cir. 2024), cert. denied sub nom. Smith v. Stillie, 220 L. Ed. 2d 215 (2024) (discussed in Paragraph 27 below), applied exacting scrutiny, as interpreted by the Supreme Court in Americans for Prosperity Foundation v. Bonta, 141 S. Ct. 2373 (2021), and applied in Gaspee Project v. Mederos, 13 F.4th 79 (1st Cir. 2021), cert. denied, 142 S. Ct. 2647 (2022) and No on E v. Chiu, 85 F.4th 493 (9th Cir. 2023), cert. denied, 220 L. Ed. 2d 10 (2024), to deny a motion for preliminary injunction to enjoin enforcement of Alaska's statutory disclosure and disclaimer requirements for independent expenditures. (l) The court in Rio Grande Foundation v. Oliver, 154 F.4th 1213 (10th Cir. 2025) (discussed in Paragraph 27 below), applied exacting scrutiny, as interpreted by the Supreme Court in Americans for Prosperity Foundation v. Bonta, 141 S. Ct. 2373 (2021), and applied in Gaspee Project v. Mederos, 13 F.4th 79 (1st Cir. 2021), cert. denied, 142 S. Ct.	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	2647 (2022), to grant the state summary judgment to reject a challenge to New Mexico's statutory disclosure requirements for independent expenditures. (m) Other courts have applied the narrow tailoring requirement to strike down statutory disclosure schemes. See Wyoming Gun Owners v. Gray, 83 F.4th 1224 (10th Cir. 2023) (discussed in Paragraph 38 below); Center for Civic Action v. City of Albuquerque Board of Ethics and Campaign Practices, 2025 WL 3485749 (D.N.M. Dec. 4, 2025) (described in Paragraph 25 below); Minnesota Right to Life v. Rashid, Case No. 25-CV-02476 (NEB/DTS), Order on Motion for Preliminary Injunction (D. Minn. Oct. 20, 2025) (described in Paragraph 35 below); Dinner Table Action v. Schneider, 2025 U.S. Dist. LEXIS 134052, at *18 (D. Me. July 15, 2025) (described in Paragraph 38 below); Lakewood Citizens Watchdog Group v. City of Lakewood, 2021 WL 4060630 (D. Colo. Sept. 7, 2021) (described in Paragraph 38 below). (n) One commentator points out that under Bonta, the following types of compulsory disclosure laws may be more susceptible to constitutional challenge: (i) subjecting groups without the major purpose of promoting the election or defeat of candidates to broad disclosure and reporting requirements;	

A GUIDE TO ELECTION YEAR ACTIVITIES OF SECTION 501(C)(3) AND 501(C)(4) ORGANIZATIONS

ACTIVITY	FEDERAL ELECTION CAMPAIGN ACT OF 1971, AS AMENDED ("FECA")	INTERNAL REVENUE CODE OF 1986, AS AMENDED ("I.R.C.")
STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	(ii) defining key terms in campaign finance laws, such as "contributions," "expenditures," and "independent expenditures," to include speech that is not campaign-related, and using the definition to trigger mandatory disclosure; (iii) expanding the definition of "electioneering communications" beyond the bounds set forth in Citizens United; (iv) requiring an organization that makes relatively small "independent expenditures" or "electioneering communications" to disclose all donors, rather than only the donors who earmark their contributions for the expenditures; (v) requiring that "independent expenditures" or "electioneering communications" be made only from a separate fund established for that purpose with disclosure of the donors to the fund; (vi) requiring disclosure of donors to groups engaged in grassroots lobbying on issues and pending legislation; and (vii) requiring that ads include the names of the organization's largest donors on the face of the ad, unless those donors earmarked their contributions for that purpose. Bradley A. Smith, "What AFPF v. Bonta Means for	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	Nonprofits and Donors," The Nonprofit Times, at 16-17 (Oct. 2021). CASES UPHOLDING DISCLOSURE REQUIREMENTS 17. (a) In The Real Truth About Abortion, Inc. v. Federal Election Commission, 681 F.3d 544 (4th Cir. 2012), cert. denied, 568 U.S. 1114 (2013), the court addressed the constitutionality of the definition of "expressly advocating" in 11 C.F.R. §100.22(b). The regulatory definition implements the statutory definition of "independent expenditure" under 52 U.S.C. §30101(17) (formerly 2 U.S.C. §431(17)), which in turn determines whether a person must satisfy the reporting and disclosure requirements of 52 U.S.C. §30104(c) (formerly 2 U.S.C. §434(c)). The statutory definition of independent expenditure is an expenditure by a person "expressly advocating the election or defeat of a clearly identified candidate" and not made by or in coordination with a candidate or political party. (b) Since the definition triggered reporting and disclosure obligations, the test of its constitutionality was exacting scrutiny. This test required the government to show a substantial relation between the disclosure requirement and a sufficiently important government interest.	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	(c) Under 11 C.F.R. §100.22(a), "expressly advocating" means a communication that uses "magic words" as described by the Supreme Court in Buckley. A communication expressly advocates the election or defeat of a clearly identified federal candidate if it: [u]ses phrases such as "vote for the President," "re-elect your Congressman," "support the Democratic nominee," "cast your ballot for the Republican challenger for U.S. Senate in Georgia," "Smith for Congress," "Bill McKay in '94," "vote Pro-Life" or "vote Pro-Choice" accompanied by a listing of clearly identified candidates described as Pro-Life or Pro-Choice, "vote against Old Hickory," "defeat" accompanied by a picture of one or more candidate(s), "reject the incumbent," or communications of campaign slogans or individual word(s), which in context, can have no other reasonable meaning than to urge the election or defeat of one or more clearly identified candidate(s), such as posters, bumper stickers, advertisements, etc. which say "Nixon's the One," "Carter '76," "Reagan/Bush" or "Mondale!" (d) Under 11 C.F.R. §100.22(b), "expressly advocating" also means any communication that: When taken as a whole and with limited reference to external events, such as the proximity to the election, could only be interpreted by a reasonable person as containing	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	advocacy of the election or defeat of one or more clearly identified candidates(s) because–(1) The electoral portion of the communication is unmistakable, unambiguous, and suggestive of only one meaning; and (2) Reasonable minds could not differ as to whether it encourages actions to elect or defeat one or more clearly identified candidate(s) or encourages some other kind of action. See also Express Advocacy; Independent Expenditures; Corporation and Labor Organization Expenditures, 60 F.R. 35,292, 35,295 (July 6, 1995) ("Communications discussing or commenting on a candidate's character, qualifications or accomplishments are considered express advocacy under new section 100.22(b) if, in context, they have no other reasonable meaning than to encourage actions to elect or defeat the candidate in question."). (e) Under Wisconsin Right to Life and Citizens United, Congress could constitutionally impose disclosure requirements for communications that contain the "magic words" of express advocacy of Buckley, and for communications that are the "functional equivalent" of express advocacy. In addition, Congress could constitutionally impose disclosure requirements for all electioneering communications, including those that are not the functional equivalent of express advocacy.	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	(f) The court pointed out that eight Justices in Citizens United held that since disclosure is a less restrictive alternative to more comprehensive regulation of speech, mandatory disclosure requirements are constitutionally permissible even if ads contain no direct advocacy, and only pertain to a commercial transaction. If mandatory disclosure requirements are permissible when applied to ads that only mention a federal candidate, then applying the same burden to ads that go further and are the functional equivalent of express advocacy cannot automatically be impermissible. Accord, Free Speech v. Federal Election Commission, 720 F.3d 788 (10th Cir. 2013), cert. denied, 572 U.S. 1114 (2014). (g) In addition, registration and organizational requirements for political committees are akin to the reporting and disclosure requirements such that, as a constitutional matter, they can be regulated regardless of whether they contain express advocacy or its functional equivalent. In support of this holding, the court relied on National Organization for Marriage v. McKee, 649 F.3d 34, 54-55 & n. 29 (1st Cir. 2011) (Maine's registration requirement for non-major-purpose PACs was a disclosure provision; in light of Citizens United, the distinction between issue discussion and express advocacy has no place in First Amendment review of disclosure-oriented laws).	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	(h) The court also distinguished its decision in Leake (discussed in Paragraph 29 below). First, the North Carolina statute in Leake was unconstitutional because the terms that defined express advocacy were clearly susceptible to multiple interpretations. In contrast, §100.22(b) applies only to communications that could only be interpreted by a reasonable person as containing advocacy of the election or defeat of one or more clearly identified candidates, and for which reasonable minds could not differ as to whether the communication encourages actions to elect or defeat one or more clearly identified candidates, or encourages some other kind of action. (i) The court also held that the electioneering requirements of FECA did not apply in determining whether the disclosure requirements were constitutional: [T]he North Carolina provision in Leake regulated all electoral speech, including, potentially, issue advocacy. To resolve whether such communications could constitutionally be regulated, we articulated two requirements. First, because the regulation covered electoral speech broadly defined, we applied the requirement in Wisconsin Right to Life, 551 U.S. at 474 n. 7, that it fulfill the statutory definition of "electioneering communication" in 2 U.S.C. §434(f)(3)(A)(i) [now 52 U.S.C. §30104(f)(3)(A)(i)], which, we noted, "refers to a 'clearly identified candidate' within sixty days of a general election or thirty days of a primary	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	election." 525 F.3d at 282. Second, to narrow the alternative definition of "express advocacy" in the North Carolina statute, we relied on the functional-equivalent test developed in Wisconsin Right to Life, 551 U.S. at 469-70. Id. While the functional equivalent test that we applied to narrow the North Carolina definition of express advocacy was drawn from the functional-equivalent test in Wisconsin Right to Life (which itself was evaluating an electioneering communication provision), the Supreme Court has recognized use of the functional-equivalent test to define "express advocacy" wherever the term is used in the election laws. See, e.g., Citizens United, 558 U.S. 368-69. In contrast, in the case before us, "express advocacy" is a component of an "independent expenditure," regulated under §432(c)(1) and §431(17) [now §30101(17)] and thus may be defined by applying the functional-equivalent test, precisely as Regulation 100.22(b) has done. Because the "electioneering communications" requirements of §434(f)(3)(A)(i) [now §30104(f)(3)(A)(i)] are not statutorily relevant to "independent expenditures," we therefore need not apply those requirements applied in Leake when considering "express advocacy" in the context of independent expenditures. [681 F.3d at 552-53] (j) Finally, the North Carolina statute in Leake imposed a variety of restrictions on campaign speech, including limits on acceptable contributions and expenditures. Again, following Citizens United, §100.22(b) only implements	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	disclosure requirements. The Supreme Court has routinely recognized that because disclosure requirements impose a lesser burden on speech, it is constitutionally permissible to require disclosure for a wider variety of speech than mere electioneering. 18. (a) In Family PAC v. McKenna, 685 F.3d 800 (9th Cir. 2012), the court upheld the constitutionality of Washington state's reporting and disclosure requirements for ballot measure committees, but struck down the prohibition on a political committee from accepting from any one person contributions exceeding $5,000 within twenty-one days of a general election. (b) Washington state statute and its administrative code required ballot measure committees to disclose the name and address of contributors giving more than $25, and to disclose the employer and occupation of contributors giving more than $100. Washington Revised Code §42.17.090 and Washington Administrative Code §390-16-034. (c) Disclosure requirements were subject to the exacting scrutiny standard of review, which meant that they had to be substantially related to a sufficiently important governmental interest. (d) The court held that in requiring the disclosure of contributions to ballot measure committees, Washington had	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	an important governmental interest of informing the voting public. (e) As to the substantial relationship test, the court acknowledged that the disclosure requirements can deter individuals who would prefer to remain anonymous from contributing to a ballot measure committee. Nevertheless, this burden was modest because disclosure requirements do not impose any ceiling on campaign-related activities, and do not prevent anyone from speaking. (f) The court also acknowledged that disclosure requirements can chill contributions to an organization by exposing donors to retaliation. However, the plaintiff made no showing that the disclosure requirements exposed contributors to significant or systemic risk of harassment or retaliation. In the unusual case presenting a genuine threat of harassment or retaliation, the affected party can challenge the disclosure requirements as applied. (g) The court then determined whether the strength of the governmental interest in disclosure justified these modest burdens. Disclosure enables the electorate to give proper weight to different speakers and messages. The money in ballot measure campaigns produces a cacophony of political communications through which voters must pick out meaningful and accurate messages. Given the complexity of the issues and the unwillingness of much of the electorate to	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	independently study the propriety of individual ballot measures, being able to evaluate who is doing the talking is of great importance. Furthermore, by knowing who backs or opposes a given initiative, voters will know who stands to benefit from the legislation. This is especially important when one considers that ballot measure language is typically confusing, and the long-term policy ramifications of the ballot measure are often unknown. The court concluded that the disclosure requirements impose only modest burdens on First Amendment rights, while serving a governmental interest in an informed electorate that is of the utmost importance. See also Montanans for Community Development v. Mangan, 735 Fed. App'x 280, 284 (9th Cir. 2018) (memorandum disposition not for publication) ("[R]equiring political committees to repeatedly report contributions within two days of making them is substantially related to Montana's important informational interest. Otherwise a political committee could make a flurry of contributions just days before an election, when many people are finalizing their views, without having to report them until after voting has occurred."); Independence Institute v. Williams, 812 F.3d 787 (10th Cir. 2016) (less than sixty days before the 2014 Colorado gubernatorial election, a Section 501(c)(3) organization planned to air an advertisement on Denver-area television that was critical of the state's failure to audit its new health care insurance exchange; ad culminated with an	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	exhortation to viewers to call the incumbent governor, John Hickenlooper, a candidate in the election, and tell him to support an audit of the exchange; under the Colorado constitution, since the ad was an electioneering communication, the organization would have to identify donors who contributed $250 or more and whose contributions were specifically earmarked to support the advertisement; court applied exacting scrutiny to uphold the constitutionality of the disclosure requirements; sufficiently tailored disclosure requirements for donors who have specifically earmarked their contributions for electioneering purposes can reach at least some types of issue speech, including speech that does not reference a particular election campaign but mentions a candidate shortly before an election); Delaware Strong Families v. Attorney General, 793 F.3d 304 (3d Cir. 2015) (court applied exacting scrutiny to uphold Delaware's statutory disclosure requirements for a Section 501(c)(3) organization that planned to distribute a voter guide over the Internet within sixty days of Delaware's general election, and to spend more than $500 on creation and distribution of the voter guide; statute required any person who made expenditures for any third-party advertisement of more than $500 during an election period to file a third-party advertisement report; statute defined a third-party advertisement in part as an electioneering communication, which was a communication that referred to a clearly identified candidate, and was publicly distributed	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	within thirty days before a primary or sixty days before a general election to an audience that included members of the electorate for the office sought by the candidate; third-party advertisement report included the full name and mailing address of each person who contributed more than $100 during the election period; "The Act marries one-time, event-driven disclosures to the applicable 'election period,' which is itself controlled by the relevant candidate's term. This provides the necessary 'substantial relationship' between the disclosure required and Delaware's informational interest;" "[I]t is the conduct of an organization, rather than an organization's status with the Internal Revenue Service, that determines whether it makes communications subject to the [Delaware] Act") (footnote omitted), cert. denied, 136 S. Ct. 2376 (2016) (rejected by Wyoming Gun Owners v. Gray, 83 F.4th 1224 (10th Cir. 2023) (discussed in Paragraph 38 below). Yamada v. Snipes, 786 F.3d 1182 (9th Cir. 2015) (court applied exacting scrutiny to uphold Hawaii's registration, reporting, and disclosure requirements for noncandidate committees that have the purpose of making and receiving contributions, and making expenditures, for communications or activities that constituted express advocacy or its functional equivalent; noncandidate committee status was triggered when an organization received contributions or made expenditures totaling more than $1,000 during a two-year election cycle; within ten days of reaching this	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	threshold, the organization had to register as a noncandidate committee by filing an organizational report, designate officers, disclose bank account information, and designate a treasurer; organization had to file reports of contributions made and received, expenditures, and assets on hand at the end of a reporting period no later than ten days before an election, twenty days after a primary election, and thirty days after a general election, and additional reports on January 31 of every year and July 31 after an election year; if a committee had aggregate contributions of $1,000 or less in an election period, it had to file a single, final election-period report, or request to terminate its registration; court held that these requirements were not unduly onerous, and served the government interests of providing the electorate with information about who is speaking, deterring actual corruption and avoiding any appearance thereof by exposing large contributions and expenditures to the light of publicity, and gathering the data to detect violations of valid contribution limitations and preventing circumvention of Hawaii's campaign spending limitations; the $1,000 threshold adequately ensured that political committee burdens were not imposed on groups that only incidentally engaged in political advocacy; the argument that the requirements should reach only organizations with a primary purpose of political advocacy ignored the fundamental organizational reality that most organizations do not have just one major purpose), cert. denied sub nom. Yamada v.	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	Shoda, 577 U.S. 1007 (2015); ProtectMarriage.com-Yes on 8 v. Bowen, 752 F.3d 827, 833 (9th Cir. 2014) (court applied exacting scrutiny to reject a facial challenge to the requirement of California statute that ballot committees report after an election the contributions made before the election and after the final pre-election reporting deadline; "A state's interests in contribution disclosure do not necessarily end on election day. Even if a state's interest in disseminating accurate information to voters is lessened after the election takes place, the state retains its interests in accurate record-keeping, deterring fraud, and enforcing contribution limits. As a practical matter, some lag time between an election and disclosure of contributions that immediately precede that election is necessary for the state to protect these interests. In this case, for example, Appellants' contributions surged nearly 40% (i.e., by over $12 million) between the final pre-election reporting deadline and election day. Absent post-election reporting requirements, California could not account for such late-in-the day donations. And, without such reporting requirements, donors could undermine the State's interests in disclosure by donating only once the final pre-election reporting deadline has passed."), cert. denied sub nom. ProtectMarriage.com-Yes on 8 v. Padilla, 574 U.S. 190 (2015). Worley v. Florida Secretary of State, 717 F.3d 1238 (11th Cir. 2013) (court applied exacting scrutiny to reject a facial	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	challenge to the requirement of Florida statute for group that spent $600 in radio ads to oppose a state constitutional amendment on a ballot measure to satisfy the registration, organizational, and recordkeeping obligations of a political action committee; court also upheld the absence of a minimum reporting threshold for contributions), cert. denied sub nom. Worley v. Detzner, 571 U.S. 991 (2013); National Organization for Marriage, Inc. v. McKee, 669 F.3d 34 (1st Cir. 2012) (court applied exacting scrutiny to uphold Maine's statutory reporting and disclosure requirements for individuals and groups that receive or make aggregate contributions or expenditures in excess of $5,000 for the purpose on initiating or influencing a ballot measure campaign; the term "influencing" was not unconstitutionally vague because a state agency construed it to apply to communications that expressly advocate for or against a ballot question, or that clearly identify a ballot question by apparent and unambiguous reference and are susceptible of no reasonable interpretation other than to promote or oppose the ballot question); Human Life of Washington Inc. v. Brumsickle, 624 F.3d 990, 1011 (9th Cir. 2010) (court applied exacting scrutiny to uphold Washington state's registration, reporting, and disclosure requirements facially and as applied to Human Life, a nonprofit, pro-life advocacy corporation, and its proposed campaign to educate voters about the dangers of physician-assisted suicide in connection with a ballot measure that would legalize the	

ACTIVITY	FEDERAL ELECTION CAMPAIGN ACT OF 1971, AS AMENDED ("FECA")	INTERNAL REVENUE CODE OF 1986, AS AMENDED ("I.R.C.")
STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	practice; requirements applied to political committee that has as its primary or one of its primary purposes to affect governmental decision making by supporting or opposing candidates or ballot propositions; court rejected Fourth Circuit's position in North Carolina Right to Life Inc. v. Leake, 525 F.3d 274, 289 (4th Cir. 2008), that political committees can only be regulated if they have the support or opposition of candidates as their primary purpose; "Human Life concedes, as it must, that there is a substantial relationship between the government's informational interest and the disclosure requirements it may impose on groups whose single primary purpose is political advocacy. We fail to see how that relationship changes so materially as to render the relationship insubstantial once the groups engage in several primary purposes including political advocacy."), cert. denied, 562 U.S. 1217 (2011). Students for Life Action v. Jackley, 746 F. Supp. 3d 668 (D.S.D. 2024) (in granting the state's motion to dismiss, court upheld South Dakota statute that required on-ad disclaimers and disclosure statements for expenditures for independent communications that referred to a candidate or ballot question; the on-ad disclaimer provision required that ads costing over $100 identify who is making the independent communication expenditure for that communication, include a mailing and website address for the person or entity making the expenditure, and list the entity's top five contributors from the prior twelve months;	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	disclosure statement provision required those making the expenditures file an independent communication expenditure statement with the South Dakota Secretary of State within forty-eight hours of the time the communication is disseminated, broadcast, or otherwise published). See generally Lee Goodman, Wiley Rein LLP, "Chapter 6 Campaign Finance and Other Very Public Exceptions to Privacy," The First Amendment Right to Political Privacy (Sept. 2019) (available at https://www.wileyrein.com/newsroom-newsletters-item-The-First-Amendment-Right-to-Political-Privacy-Chapter-6-Campaign-Finance-and-Other-Very-Public-Exceptions-to-Privacy.html). (h) The court also held that the $25 and $100 reporting thresholds were not too low to survive exacting scrutiny. The court acknowledged that public disclosure of a single $25.01 contribution may provide little relevant information to voters. Nevertheless, small contributions may provide useful information to voters when considered in the aggregate. On the government agency's website, voters can conduct detailed searches and sort ballot measure contribution data by city, state, and zip code. Voters can use this geographical information to determine whether statewide ballot measures are financed by out-of-state contributors, or whether county-wide ballot measures are financed by out-of-county interests. With respect to	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	contributions exceeding $100, voters can also aggregate the data by employer and occupation to determine whether particular economic interests stand to benefit from the legislation. See also Vermont Right to Life Committee, Inc. v. Sorrell, 758 F.3d 118, 138-39 (2d Cir. 2014) (court upheld $100 threshold for reporting a contribution to a PAC), cert. denied, 574 U.S. 1074 (2015). (i) The court distinguished Canyon Ferry (discussed in Paragraph 31 below) and Sampson (discussed in Paragraph 32 below) as striking down reporting requirements as applied to the plaintiffs, rather than contribution disclosure requirements. (j) In addition, disclosure thresholds are inherently exact. Therefore, courts owe substantial deference to legislative judgments fixing these amounts. (k) The court then addressed whether the twenty-one day limit is closely drawn to advance the important interest in giving voters access to contributor information. The court stated that contribution limits imposed on ballot measure committees burden freedom of association by making it harder for individuals to band together to advance their views on the ballot measure. The limits also burden freedom of speech because limits on contributions affect	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	expenditures, and limits on expenditures operate as a direct restraint on freedom of expression of a group desiring to engage in political dialogue concerning a ballot measure. (l) The court found that Washington's limit imposes a significant burden because it limits contributions during the critical three-week period before the election when political committees may want to respond to developing events. (m) The court held that Washington's limit was not closely drawn to provide voters with information they need to make informed choices. The limit was not reasonably necessary to inform voters about large contributions made in the final three weeks of the election. Campaign contributions can be reported and made publicly available within minutes and certainly within twenty-four hours. Furthermore, Washington already had in place a system requiring committees during the twenty-one days preceding the election to disclose contributions from large contributors within forty-eight or twenty-four hours of receiving them. (n) It is true that some voters may choose to vote early, and they may not learn of some large contributions until they have already voted. However, voters who cast their ballots while campaigning is still in full swing make a voluntary choice to forgo relevant information that may come to light in the final three weeks of the campaign. Therefore, the state's interest in informing these voters is a weak one. It is	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	outweighed by countervailing interests, including the right of ballot measure committees to raise and spend funds, the right of individuals to contribute funds to ballot measure committees, and the interest of the voting public in the messages that those committees may convey in the final weeks of the election. 19. (a) In Center for Individual Freedom, Inc. v. Madigan, 697 F.3d 464 (7th Cir. 2012), the court upheld Illinois' statutory disclosure requirements for groups and individuals that accept contributions, make expenditures, or sponsor electioneering communications in excess of $3,000. The Illinois Election Code drew the key definitions of contribution, expenditure, and electioneering communication from federal law. The only substantive differences were that the Illinois disclosure requirements: (i) covered election activity relating to ballot initiatives, which have no federal analog; (ii) did not exempt from regulation those groups that lacked the major purpose of influencing electoral campaigns; and (iii) covered campaign-related advertisements on the Internet. The court rejected the argument that these differences rendered the disclosure regime unconstitutionally vague and overbroad on its face. (b) Each political committee had to register with the Illinois Board of Elections, maintain records of every contribution received and expenditure made in connection with an election, 10 ILCS 5/9-7, and file a report of all transactions	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	each quarter. 10 ILCS 5/9-10(b). The quarterly report had to include the total sums of contributions received and expenditures made in the covered period; accountings of the committee's funds on-hand and investment assets held; and the name and address of each contributor who gave more than $150 that quarter. 10 ILCS 5/9-11(a). In addition to the quarterly report, a political committee had to disclose any contribution of $1,000 or more (along with the name and address of the contributor) within five days of its receipt, or within two days if received thirty or fewer days before an election. 10 ILCS 5/9-10(c). For reporting violations, the Board may issue civil fines of no more than $5,000 for any one group (except in the case of willful and wanton violations), or seek to enjoin violators' campaign activities in state court. 10 ILCS 5/9-10. (c) Candidates' campaign organizations and political parties had to register as political committees. 10 ILCS 5/9-1.8(b), (c). In addition, outside groups and private individuals had to register as political committees if, within any twelve month period, they accepted contributions or made expenditures in excess of $3,000 on behalf of or in opposition to any candidate or ballot question. 10 ILCS 5/9-1.8(d), (e). Any entity other than a natural person had to register as a political committee if it made independent expenditures of more than $3,000 within one year. 10 ILCS 5/9-8.6(b).	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	(d) The Illinois disclosure provisions differed from federal disclosure provisions in two respects. First, they extended the disclosure of expenditures and contributions to ballot initiative campaigns. Second, they regulated as a political committee any organization that exceeds the dollar-limit spending thresholds, while under federal law only those groups with the major purpose of influencing elections must register as political committees. (e) The test of the constitutionality of the disclosure requirements was exacting scrutiny, which requires a substantial relation between the disclosure requirement and a sufficiently important governmental interest. Citizens United, 558 U.S. at 366-67. (f) The state interest at issue was that of providing the electorate with information as to where political campaign money comes from and how it is spent. This informational interest was sufficiently important to support disclosure requirements. Disclosure requirements advance the public's interest in information by allowing voters to place each candidate in the political spectrum more precisely than is often possible solely on the basis of party labels and campaign speeches. By revealing the sources of a candidate's financial support, disclosure laws alert the voter to the interests to which the candidate is most likely to be	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	responsive and thus facilitate predictions of future performance in office. (g) The court upheld the disclosure requirements for ballot issue campaigns. Because the issues can be complex and the public debate confusing, voters' interest in knowing the source of messages promoting or opposing ballot measures is especially salient in these campaigns. Because nominally independent political operations can hide behind misleading names to conceal their identity, often disclosure of the sources of their funding may enable the electorate to ascertain the identities of the real speakers. Disclosure enables the electorate to make informed decisions and give proper weight to different speakers and messages. (h) The court acknowledged that disclosure placed two burdens on First Amendment rights. First, disclosure requirements deter contributions or expenditures by some individuals and groups who would prefer to remain anonymous. Second, disclosure requirements can chill donations to an organization by exposing donors to retaliation. (i) The court found that these burdens were modest. Although disclosure requirements may burden the ability to speak, they impose no ceiling on campaign-related activities, and do not prevent anyone from speaking. The burden of public identification may foreclose application of	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	disclosure laws to individual pamphleteers, or small neighborhood groups that raise less than $1,000, see Sampson v. Buescher, 625 F.3d 1247 (10th Cir. 2010) (discussed in Paragraph 32 below), for in these cases the state's interest in disseminating such information to voters is at a low ebb. The plaintiff is a far cry from the lone pamphleteer, and its broad interest in anonymity does not justify invalidating disclosure laws in a facial challenge brought by a national political advocacy organization that seeks to use the mass media in Illinois to spread its political messages on a broad scale. (j) The record in the facial challenge did not support any prospect of retaliation that could bar application of the disclosure requirements. (k) The court also rejected the argument that the disclosure requirements imposed undue burdens on speakers because the definition of electioneering communication did not adequately distinguish ballot initiative advocacy from pure issue discussion. Under Citizens United, the distinction between express advocacy and issue discussion does not apply in the disclosure context. The court rejected the holding of New Mexico Youth Organized v. Herrera, 611 F.3d 669, 677 n. 4 (10th Cir. 2010) (discussed in Paragraph 30 below), "that for a regulation of campaign related speech	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	to be constitutional it must be unambiguously campaign related." (l) Furthermore, even if disclosure requirements constitutionally applied only to express advocacy and its functional equivalent, Illinois' statutory definition of electioneering communication was limited by language nearly identical to that used in Wisconsin Right to Life to define the functional equivalent of express advocacy. Compare 10 ILCS 5/9-1.14 (the broadcast must be "susceptible to no reasonable interpretation other than as an appeal to vote for or against a clearly identified candidate, . . . a political party, or a question of public policy that will appear on the ballot") with Wisconsin Right to Life, 551 U.S. at 669-70 (principal opinion) ("a court should find that an ad is the functional equivalent of express advocacy only if the ad is susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate"). (m) In addition, the Illinois' definition of electioneering communication was limited by the same factors as the definition under FECA: medium; total amount spent; temporally; geographically; and content. (n) The court also rejected the argument that the state could constitutionally impose disclosure requirements only on organizations that are under the control of a candidate, or	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	whose major purpose is the nomination or election of a candidate. The court relied on four reasons. First, the major purpose test used by the Court in Buckley was a creature of statutory interpretation, and not a constitutional command. See National Organization for Marriage, 649 F.3d at 59; Human Life, 624 F.3d at 1009-10. (o) The court rejected the holdings of New Mexico Youth Organized v. Herrera, 611 F.3d 669, 677-78 (10th Cir. 2010) (discussed in Paragraph 30 below), and North Carolina Right to Life, Inc. v. Leake, 525 F.3d 274 (4th Cir. 2008) (discussed in Paragraph 29 below), that the major purpose test must be satisfied before disclosure requirements can apply. (p) Second, Illinois statute limited political committee status to groups that accept contributions or make expenditures on behalf of or in opposition to a candidate or ballot initiative. (q) Third, application of the major purpose test would yield perverse results. A small group with a major purpose of electing a state representative that spends $3,000 for ads could be required to register as a political committee, while a large group that spends $1,500,000 to defeat the same candidate, but spends far more on noncampaign related activities, would not have to register because the defeat of the candidate would not be the large group's major purpose. National Organization for Marriage, 649 F.3d at 264.	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	(r) Fourth, limiting disclosure requirements to groups with the major purpose of influencing elections would allow even those groups to circumvent the law with ease. Any organization dedicated primarily to electing candidates or promoting ballot measures could easily dilute that major purpose by just increasing its nonelectioneering activities or better yet by merging with a sympathetic organization that engaged in activities unrelated to campaigning. (s) For these four reasons, the major purpose test did not apply to the determination of the constitutionality of disclosure requirements. Instead, the exacting scrutiny test applied. See also Vermont Right to Life Committee, Inc. v. Sorrell, 758 F.3d 118, 131-36 & n. 12 and 15 (2d Cir. 2014) (disclosure requirements for electioneering communications during a campaign for public office, and mass media communications made within forty-five days before an election that include the name or likeness of a clearly identified candidate, are not constitutionally limited to organizations whose major purpose is the nomination or election of a candidate, or to communications that expressly advocate the election or defeat of a clearly identified candidate; court disagreed with the holding of Wisconsin Right to Life, Inc. v. Barland, 751 F.3d 804 (7th Cir. 2014),	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	that express advocacy is a limitation on disclosure requirements), cert. denied, 574 U.S. 1074 (2015). 20. (a) In Center for Individual Freedom, Inc. v. Tennant, 706 F.3d 270 (4th Cir. 2013), the court upheld the constitutionality of the definition of "expressly advocating" against a vagueness challenge. West Virginia statute defined "expressly advocating" as any communication that: [i]s susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate. [W. Va. Code §3-8-1a(12)(C)] (b) The statutory scheme incorporated the phrase "expressly advocating" into the definition of "independent expenditure" and did not include the phrase elsewhere. Under the statute, an "independent expenditure" is "an expenditure . . . [e]xpressly advocating the election or defeat of a clearly identified candidate" and "[t]hat is not made in concert or cooperation with or at the request or suggestion of such candidate, his or her agents, the candidate's authorized political committee or a political party committee or its agents." [W. Va. Code §3-8-1a(15)] (c) The definition of "expressly advocating" under the West Virginia statute was identical to the "functional equivalent" test under Wisconsin Right to Life. Under Real Truth About	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	Abortion, a definition that satisfied the "functional equivalent" test was constitutional. See also Yamada v. Snipes, 786 F.3d 1182, 1190-91 (9th Cir. 2015) ("Only expenditures for communications that expressly advocate for a candidate or are 'susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate' can trigger noncandidate committee registration, reporting and disclosure under [Hawaii Revised Statute] *§11-302*. There is no dispute that 'express advocacy' is not a vague term, and the controlling opinion in *Wisconsin Right to Life* held the 'functional equivalent' or a 'appeal to vote' component of this test also meets the 'imperative for clarity' that due process requires. *551 U.S. at 474 n. 7*. That close cases may arise in applying this test does not make it unconstitutional, given there will always be an inherent but permissible degree of uncertainty in applying any standards-based test. *See Williams, 553 U.S. at 306* ('Close cases can be imagined under virtually any statute.'); *Real Truth, 681 F.3d at 554-55*. We therefore join the First, Fourth and Tenth Circuits in holding that the 'appeal to vote' language is not unconstitutionally vague. *See Free Speech v. Fed. Election Comm'n, 720 F.3d 788, 795-96 (10th Cir. 2013); Real Truth, 681 F.3d at 552. 554* ('[T]he test in *Wisconsin Right to Life* is not vague.'); *McKee, 649 F.3d at 70*."), cert. denied sub nom. Yamada v. Shoda, 577 U.S. 1007 (2015); Vermont Right to Life Committee, Inc. v. Sorrell, 758 F.3d 118, 128 (2d Cir. 2014)	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	("The 'electioneering communication' definition, which triggers disclosure requirements, uses the words 'promotes,' 'supports,' 'attacks,' and 'opposes.' Vt. Stat. Ann. tit. 17, §2901(6). VRLC contends that these terms are impermissibly vague. We disagree; this language is sufficiently precise."), cert. denied, 574 U.S. 1074 (2015). (d) The court struck down the exemption for Section 501(c)(3) organizations from the definition of "electioneering communications." Electioneering communications triggered disclaimer and reporting requirements. Section 3-8-1a(11) of the West Virginia Code defined an electioneering communication as: any paid communication made by broadcast, cable or satellite signal, or published in any newspaper, magazine or other periodical that: (i) Refers to a clearly identified candidate for Governor, Secretary of State, Attorney General, Treasurer, Auditor, Commissioner of Agriculture, Supreme Court of Appeals or the Legislature; (ii) Is publicly disseminated within: (I) Thirty days before a primary election at which the nomination for office sought by the candidate is to be determined; or (II) Sixty days before a general or special election at which the office sought by the candidate is to be filled; and	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	(iii) Is targeted to the relevant electorate. (e) The statute exempted "communication[s] paid for by any organization operating under §501(c)(3) of the Internal Revenue Code." W.Va. Code §3-8-1a(11)(B)(iv). Since electioneering communications triggered disclaimer and reporting requirements, the test of constitutionality was exacting scrutiny. Under this test, West Virginia had to demonstrate that regulating communications that come within the exemption does not bear a substantial relation to the government interest of providing the electorate with information about the source of campaign-related spending. (f) The exemption failed exacting scrutiny for two reasons. First, the exemption likely deprived the electorate of information about Section 501(c)(3) organizations' election-related activities. Second, the West Virginia Legislature did not set forth comprehensive findings for enacting the exemption. See also Citizens United v. Gessler, 773 F.3d 200, 216 (10th Cir. 2014) (in an as-applied challenge to Colorado's statutory disclosure requirements for electioneering communications and independent expenditures, court granted preliminary injunction prohibiting their enforcement against a nonprofit corporation that produced and distributed a film that referred to Colorado candidates and contained footage of events in which participants advocated the	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	election or defeat of Colorado candidates; corporation had a history of producing and distributing two dozen documentary films over the course of a decade; although the statute exempted cable and over-the-air broadcasters, Internet periodicals and blogs, and printed periodicals from the disclosure requirements, the state failed to show a substantial relation between a sufficiently important governmental interest and exempting these media but not the corporation; "Because Colorado has determined that it does not have a sufficient informational interest to impose disclosure burdens on media entities, it does not have a sufficient interest to impose those requirements" on the corporation). 21. (a) In Justice v. Hosemann, 771 F.3d 285 (5th Cir. 2014), cert. denied, 578 U.S. 905 (2016), the court, applying the exacting scrutiny test, upheld the constitutionality of Mississippi state's statutory reporting and disclosure requirements for ballot initiatives proposing amendments to the state constitution. (b) Under Mississippi statute, a political committee that either receives contributions or makes expenditures in excess of $200 must file financial reports with the Secretary of State. Miss. Code Ann. §23-17-51(1). When a group registers as a political committee, it must file a one-page "Statement of Organization" that asks it to list the name and address of the committee; whether it is registered with the	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	FEC or authorized by a candidate; it purpose; and the names of all officers, and its director and treasurer. Political committees must file monthly reports with the Secretary of State that disclose contributions and expenditures, both monthly and cumulatively. Miss. Code Ann. §23-17-51(3), 23-17-53. They must also itemize all contributions from individuals who have contributed $200 or more in a given month, and list the contributor's name, street address, and date of the contribution. Miss. Code Ann. §23-17-539b)(vii). Finally, individuals who expend over $200 to influence voters were subject to monthly reporting requirements. Miss. Code Ann. §§23-17-51(2), 23-17-53(c). (c) The court held that Mississippi had a sufficiently important governmental interest in providing the electorate with information as to where political campaign money comes from and how it is spent: The initiatives on a ballot are often numerous, written in legalese, and subject to the modern penchant for labeling laws with terms embodying universally-accepted values. Disclosure laws can provide some clarity amid this murkiness. For example, if disclosure laws reveal that unions are supporting a proposed constitutional amendment, that may indicate to antiunion votes that they may want to vote against the measure and to prounion voters that they may want to vote for it. [771 F.3d at 298]	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	(d) In addition, in an age marked by the rapid multiplication of media outlets and internet reporting, the marketplace of ideas has become flooded with information and political messages. Citizens rely on a message's source as a proxy for reliability and a barometer of political spin. These benefits accrue to the voters even when small-dollar contributors are disclosed. Worley v. Florida Secretary of State, 717 F.3d 1238, 1251 (11th Cir. 2013) ("[D]isclosure of a plethora of small contributions could certainly inform voters about the breadth of support for a group or a cause."); National Organization for Marriage, Inc. v. McKee, 669 F.3d 34, 41 (1st Cir. 2012) ("The issue is . . . not whether voters clamor for information about each 'Hank Jones' who gave $100 to support an initiative. Rather, the issue is whether the cumulative effect of disclosure ensures that the electorate will have access to information regarding the driving forces backing and opposing each bill.") (citations and internal quotation marks omitted); National Organization for Marriage, Inc. v. McKee, 649 F.3d 34, 57 (1st Cir. 2011). (e) The court held that the registration and reporting burdens were minimal, and survived exacting scrutiny. The reporting requirements were commonplace, and required little more if anything than a prudent person or group would do anyway.	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	22. (a) In Independence Institute v. Federal Election Commission, 216 F. Supp. 3d 176 (D.D.C. 2016) (three judge panel), summarily aff'd, 137 S. Ct. 1204 (2017), the court upheld the constitutionality of the disclosure requirements for electioneering communications under 52 U.S.C. §30104(f) as applied to a Colorado-based nonprofit, Section 501(c)(3) organization that planned to run a radio advertisement before the 2014 and 2016 general elections. (b) Under 52 U.S.C. §30104(f)(1), every person who makes a disbursement for the direct costs of producing and airing electioneering communications in an aggregate amount of $10,000 during any calendar year shall, within 24 hours of each disclosure date, file with the FEC an information statement. (c) Under 52 U.S.C. §30104(f)(2), the information statement must disclose: (i) the identification of the person making the disbursement; (ii) the principal place of business of the person making the disbursement; (iii) the amount of each disbursement of more than $200 during the period covered by the statement; (iv) the identification of the person to whom the disbursement was made; (v) the elections to which the electioneering communications pertain; (vi) the names (if known) of the candidates identified or to be identified; and (vii) the names and addresses of all contributors who contributed an aggregate amount of $1,000	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	or more for the purpose of disseminating the electioneering communication. (d) The Independence Institute was a Colorado-based nonprofit, Section 501(c)(3) organization that conducts research and seeks to educate the public on a variety of policy issues, including healthcare, justice, education, and taxation. As part of its educational mission, the Institute produces advertisements that mention the officeholders who direct the policies of interest to the Institute. (e) United States Senator Mark Udall of Colorado was a candidate for reelection in the November 4, 2014 general election. In the sixty days preceding that election, the Institute wanted to run a radio advertisement that urged Coloradans to call Senator Udall, as well as Senator Michael Bennet, to express support for the Justice Safety Valve Act. (f) The court upheld the upheld the constitutionality of the disclosure requirements for electioneering communications as applied to the radio advertisement. First, the constitutionality of a disclosure provision does not turn on the content of the advocacy accompanying an explicit reference to an electoral candidate. It is the tying of an identified candidate to an issue or message that justifies the disclosure requirement because that linkage gives rise to the voting public's informational interest in knowing who is speaking about a candidate shortly before an election. See	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	also Brown v. Federal Election Commission, 386 F. Supp. 3d 16 (D.D.C. 2019) (disclaimer and disclosure requirements for electioneering communications pass exacting scrutiny irrespective of the nature of the message conveyed by the communications). (g) Second, the Institute did not offer any administrable rule or definition that would distinguish which types of advocacy specifically referencing electoral candidates would fall on which side of the constitutional disclosure line, or how the FEC could neutrally police it. It would blink reality to try and divorce speech about legislative candidates from speech about the legislative issues for which they will be responsible. (h) Third, the disclosure requirement satisfied the exacting scrutiny test. The advertisement triggered informational interests because it linked an electoral candidate to political issues, pending federal legislation addressing unjust sentencing of criminal defendants, and solicited voters to press the legislative candidate for his position on the legislation in the run up to an election. (i) In addition, disclosure would assist the public, FEC, and Congress in monitoring those who seek to influence the issues debated during peak election season, and to link candidates in the voters' eyes with specific policy matters. Furthermore, large-donor disclosures would help the FEC to	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	enforce existing regulations and to ensure that foreign nationals or foreign governments do not seek to influence United States' elections. (j) Another interest furthered by disclosure was that it arms voters with information about a candidate's most generous supporters, and makes it easier to detect any post-election special favors that may be given in return. (k) Finally, the Institute's status as a Section 501(c)(3) tax-exempt organization did not make a difference in the constitutional analysis. The First Amendment permits disclosure provisions that regulate speech based on its references to electoral candidates, and not on the speaker's identity or taxpaying status. 23. (a) In National Association for Gun Rights, Inc. v. Mangan, 933 F.3d 1102 (9th Cir. 2019), cert. denied, 140 S. Ct. 2825 (2020), the court applied exacting scrutiny and upheld Montana's electioneering disclosure laws against First Amendment attack by the National Association for Gun Rights, Inc., a Section 501(c)(4) organization. In applying exacting scrutiny, the court looks to whether: (i) disclosure laws further the interests of providing the electorate with information, deterring actual corruption, and avoiding any appearance thereof, and gathering the data necessary to enforce more substantive electioneering restrictions; (ii) the substantive information organizations must disclose varies	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	with the type and level of an organization's political advocacy; (iii) the frequency of required reporting does not extend indefinitely to all advocacy conducted at any time, but is tied to election periods or continued political spending; and (iv) disclosure laws specifying a monetary threshold at which contributions or expenditures trigger reporting requirements ensure that government does not burden minimal political advocacy. (b) Montana statute defined an electioneering communication as "a paid communication that is publicly distributed by radio, television, cable, satellite, internet website, newspaper, periodical, billboard, mail, or any other distribution of printed material, that is made within 60 days of the initiation of voting in an election, that does not support or oppose a candidate or ballot issue, that can be received by more than 100 recipients in the district voting on the candidate or ballot issue, and that: (i) refers to one or more clearly identified candidate in that election; (ii) depicts the name, image, likeness, or voice of one or more clearly identified candidates in that election; or (iii) refers to a political party, ballot issue, or other question submitted to the voters in that election." Mont. Code Ann. §13-1-101(16). (c) An organization that makes an expenditure of more than $250 on a single electioneering communication had to register as a political committee. Section 13-1-101(31)(a)	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	defined political committee as a "combination of two or more individuals or a person other than an individual who receives a contribution or makes an expenditure: (i) to support or oppose a candidate or a petition for nomination; (ii) to support or oppose a ballot issue or a committee organized to support or oppose a ballot issue; or (iii) to prepare or disseminate an election communication, an electioneering communication, or an independent expenditure." (d) Political committees must file a registration form with the Commissioner of Political Practices containing an organizational statement and the names and addresses of all officers, §13-37-201(2)(b); appoint a treasurer registered to vote in Montana; §§13-37-201(l), -203; deposit all contributions received and expenditures to be disbursed into a bank authorized to transact business in Montana, §13-37-205; abide by certain depository requirements, §13-37-207; and keep up-to-date records of contributions and expenditures, §13-37-208. (e) There were two types of political committees at issue: an incidental committee and an independent committee. An incidental committee is a political committee not specifically organized or operating for the primary purpose of supporting or opposing candidates or ballot issues but that may incidentally become a political committee by receiving	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	a contribution or making an expenditure. §13-1-101(23)(a). An example is a business that operates continuously. (f) If an incidental committee makes an expenditure of more than $250, it is considered an incidental political committee only for the election cycle in which it makes a qualifying expenditure. The committee must report to whom it is making expenditures, but is not required to report from whom it is receiving contributions unless those contributions were solicited or earmarked for a particular candidate, ballot issue, or petition for nomination. §13-37-232. (g) An incidental committee must file periodic reports of expenditures, and, if applicable, contributions during an election cycle in which it makes an expenditure, so long as it continues to accept qualifying contributions or make qualifying expenditures. If an incidental committee terminates all qualifying contribution and expenditure activity for an election cycle, it may file a closing report at any time. §13-37-226(9). If it does so, the committee need not file any subsequent reports. In practice, if an incidental committee makes only one expenditure in an election cycle, it can fulfill all registration, reporting, and closing requirements in a single filing of two forms. (h) An independent committee is a political committee organized for the primary purpose of receiving contributions and making expenditures that is not controlled by a	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	candidate and that does not coordinate with a candidate in conjunction with making expenditures. An independent committee is subject to more detailed disclosure and reporting requirements than an incidental committee. It must report the source and amount of its contributions, as well as the target and amount of its expenditures. §13-37-229. An independent committee must make the required disclosures in the same periodic intervals as an incidental committee. §13-37-226(4). Like an incidental committee, an independent committee may file closing reports at any time. However, because its primary purpose is to advocate during elections, an independent committee often does not close after an election cycle but instead caries over from one election cycle to the next. (i) The court held that the appropriate standard of review for disclosure requirements was exacting scrutiny, rather than strict scrutiny. Exacting scrutiny was appropriate because electioneering disclosure requirements reinforce democratic decision-making by ensuring that voters have access to information about the speakers competing for their attention and attempting to win their support. (j) The court also held that the First Amendment does not limit states' election disclosure requirements solely to regulating express advocacy. Montana's disclosure requirements for political speech that mentions a candidate or ballot initiative in the days leading up to an election	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	reflect the unremarkable reality that such speech, whether express advocacy or not, is often intended to influence the electorate regarding the upcoming election. That NAGR intends specifically to send out its mailers during the current election cycle reveals its own belief that such communications are more relevant to voters in the days before an election. (k) The court upheld Montana's disclosure regime under exacting scrutiny. First, Montana's interests in increasing transparency, informing voters who is behind the messages vying for their attention, and decreasing circumvention of campaign finance laws are sufficiently important to justify election disclosure requirements. (l) Second, variance in substantive reporting requirements for different levels of political advocacy ensures that the electorate has information about groups that make political advocacy a priority, without sweeping into its purview groups that only incidentally engage in such advocacy. Montana's two-tiered reporting structure imposed reporting requirements commensurate with an organization's level of political advocacy. (m) Third, in valid electioneering disclosure laws, the frequency of required reporting does not extend indefinitely to all advocacy conducted at any time but is tied to election periods or to continued political spending. During an	

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	election period, reporting is for the most part limited to reasonable intervals in the days leading up to an election and shortly thereafter. Less extensive reporting requirements are imposed on organizations that receive contributions or make expenditures outside an election period, or on organizations that stop making expenditures in the middle of an election period. These requirements reflect the unique importance of the temporal window immediately before a vote, when speech is more likely to be perceived as related to an election and the public is more likely to pay attention to and be affected by such speech. Montana's reporting requirements were carefully tailored to pertinent circumstances. (n) Fourth, disclosure laws specifying a monetary threshold at which contributions or expenditures trigger reporting requirements ensure that the government does not burden minimal political advocacy. Once reporting requirements are triggered, states may constitutionally mandate disclosure of even small contributions. Montana's regime imposed disclosure requirements only on organizations that make an expenditure of more than $250 to disseminate a single electioneering communication, thereby ensuring that disclosure requirements do not burden minimal political activity. (o) Furthermore, disclosure laws may impose certain adjunct requirements on political speakers to enable gathering the	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	information necessary to enforce more substantive electioneering restrictions. An organization may be required to designate officers, disclose its bank account information, and designate a treasurer responsible for recording contributions and expenditures and maintaining records for five years, as well as to file a short registration form containing the organization's name, relationship with other organizations, and persons with authority over the organization's finances. Montana's registration requirements were not overly onerous. (p) Finally, the court struck down the requirement that a political committee's designated treasurer be a registered Montana voter as not related to any important governmental interest. An individual can meet all the requirements for registering to vote yet not register. 24. (a) In Gaspee Project v. Mederos, 13 F.4th 79 (1st Cir. 2021), cert. denied, 142 S. Ct. 2647 (2022), the court applied exacting scrutiny, as interpreted by the Supreme Court in Americans for Prosperity Foundation v. Bonta, 141 S. Ct. 2373 (2021), to uphold Rhode Island's statutory disclosure and disclaimer scheme for independent expenditures and electioneering communications. Importantly, the court upheld the requirement for a Section 501(c)(4) organization that makes, incurs, or funds a written, typed, or printed electioneering communication to include on the	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	communication a list of its top five donors in the one year before the date of the communication. (b) The statute defined independent expenditure as any spending for a communication that, when taken as a whole, expressly advocates for the election or defeat of a clearly identified candidate, or the passage or defeat of a referendum. R.I.G.L. §17-25-3(17). (c) The statute defined electioneering communication as any print, broadcast, cable, satellite, or electronic media communication that unambiguously identifies a candidate or referendum, and is made sixty days before a general or special election or town meeting or thirty days before a primary election, and is targeted to the relevant electorate. A communication is targeted to the relevant electorate if it can be received by 2,000 or more persons in the district the candidate seeks to represent or the constituency voting on the referendum. R.I.G.L. §17-25-3(16). Both independent expenditures and electioneering communications excluded news stories, commentaries, editorials, candidate debates or forums, and communications made by a business entity to its members, owners, stockholders, or employees, as well as most internet communications. R.I.G.L. §§17-25-3(17)(i)(A)(D) and 17-25-2(i). (d) The statute required a person or entity to file a report of spending for independent expenditures and electioneering	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	communications when its spending for either type of communication exceeded $1,000 in a calendar year. The report had to include the name, street address, city, state, zip code, occupation, and employer of the person responsible for the expenditure, the date and amount of each expenditure, and the year-to-date total. R.I.G.L. §17-25.3-1(f). The report also had to include a statement identifying the candidate or referendum that the expenditure was intended to promote, and an affirmative statement that the expenditure was not coordinated with the campaign in question. R.I.G.L. §17-25.3-1(g). In addition, the report had to disclose the identity of all donors of an aggregate of $1,000 or more. This requirement applied to all donors who contributed $1,000 or more to the organization's general fund if the general fund was used to finance qualifying expenditures. R.I.G.L. §17-25.3-1(h). The report had to be filed each time the person or entity made an independent expenditure or electioneering communication of, in the aggregate, an additional $1,000. R.I.G.L. §17-25.3-1(d). (e) The statute also required independent expenditures and electioneering communications to include disclaimers stating who paid for the communication. R.I.G.L. §17-25.3-3(a). This included a message stating, "I am ___ (name of entity's chief executive officer or equivalent), and ___ (title) of ___ (entity), and I approved its content." R.I.G.L. §17-25.3-3(c).	

A GUIDE TO ELECTION YEAR ACTIVITIES OF SECTION 501(C)(3) AND 501(C)(4) ORGANIZATIONS

ACTIVITY	FEDERAL ELECTION CAMPAIGN ACT OF 1971, AS AMENDED ("FECA")	INTERNAL REVENUE CODE OF 1986, AS AMENDED ("I.R.C.")
STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	(f) In addition, tax-exempt organizations under Section 501(c), and Section 501(c)(4) organizations that spent an aggregate annual amount of no more than ten percent of its annual expenses, or no more than $15,000, whichever is less, on independent expenditures, electioneering communications, and certain monetary transfers, had the following disclosure obligation. These organizations that made, incurred, or funded an electioneering communication had to include on the communication a list of their five largest donors in the one year before the date of the communication. R.I.G.L. §17-25.3-3(a), (c)(3), (d)(3)(A), and (e). With respect to printed communications, this obligation did not apply to news editorials, campaign paraphernalia (such as campaign buttons and bumper stickers), or signage measuring under thirty-two square feet. R.I.G.L. §17-25.3-3(b). (g) Only money contributed for purposes of independent expenditures or electioneering communications had to be reported as such. Should a donor prefer, donations could be expressly conditioned on not using the donation for independent expenditures or electioneering communications. R.I.G.L. §17-25.3-1(i). The receiving organization then had to certify that the donation would not be used as such and that the donor would not be required to appear in the list of donors. R.I.G.L. §§17-25.3-1(i)(2) and 3.3(a).	

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	(h) The court held that since a disclosure and disclaimer scheme was at issue, exacting scrutiny, as interpreted by the Supreme Court in Americans for Prosperity Foundation v. Bonta, 141 S. Ct. 2373 (2021), applied regardless of whether the scheme applied to express advocacy or issue advocacy. Citizens United v. FEC, 558 U.S. 310, 366-69 (2010); Delaware Strong Families v. Attorney General, 793 F.3d 304,308 (3d Cir. 2015), cert. denied, 136 S. Ct. 2376 (2016); National Organization for Marriage v. McKee, 649 F.3d 34, 54-55 (1st Cir. 2011); Human Life of Washington v. Brumsickle, 624 F.3d 990, 1016 (9th Cir. 2010). Under Bonta, a law must be narrowly tailored to serve a sufficiently important governmental interest. Exacting scrutiny requires a fit that is not necessarily perfect, but reasonable. A substantial relation is necessary but not sufficient, and the challenged requirement must be narrowly tailored to the interest it promotes. (i) The governmental interest of an informed electorate vis-à-vis the source of election-related spending was sufficiently important to support the disclosure and disclaimer requirements. In an age characterized by the rapid multiplication of media outlets and the rise of internet reporting, the marketplace of ideas had a profusion of information and political messages. Citizens relied on the source of a message as a proxy for its reliability and a barometer of political spin. Disclosure of the identity and	

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	constituency of a speaker enabled the electorate to make informed decisions and give proper weight to different speakers and messages. Citizens United v. Federal Election Commission, 558 U.S. 310, 371 (2010); National Organization for Marriage v. McKee, 649 F.3d 34, 57-58 (1st Cir. 2011). (j) The court found that the disclosure and disclaimer requirements were narrowly tailored to the government's informational interest. The requirements were subject to spending thresholds and temporal limitations that tethered the requirements to the government's informational interest. The requirements applied only to independent expenditures in excess of $1,000 within a calendar year, and electioneering communications in excess of $1,000 in the sixty days before a general election and thirty days before a primary. Furthermore, an electioneering communication had to be targeted to the relevant electorate so that it can only be received by two thousand or more persons in the district the candidate seeks to represent the constituency voting on the referendum. (k) In addition, the statute provided an opt-out for donors who wished to support an organization but also wished to remain anonymous, which included donors to an organization's general fund. Donors could designate that their contributions were not to be used for independent expenditures or electioneering communications, and after	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	the organization certified as such, the donor was not required to appear on the list of donors. R.I.G.L. §17-25.3-1(i)(1)-(2). Furthermore, disclosure did not apply to individuals who contributed less than $1,000 during the relevant time frame. (l) With respect to the disclaimer requirements, the statute required disclosure of both the relevant speaker and the top-five donors to that speaker. However, the statute's spending and temporal thresholds coalesced to render the requirements applicable to a limited set of circumstances. That set of circumstances shrunk even further when donors need not be listed if they opted out of election-related spending. Furthermore, the disclaimer requirements helped to ensure a well-informed electorate by preventing those who advocate for either candidates or issues from hiding their identities from the gaze of the public. The on-ad donor disclaimer provides an instantaneous heuristic by which to evaluate generic or uninformative speaker names. The disclaimer alerts viewers that the speaker has donors, and therefore may elicit debate as to both the extent of donor influence on the message and the extent to which the top-five donors are representative of the speaker's donor base. (m) The court rejected the argument that the statute's requirements violated a speaker's or organization's privacy rights. Unlike the situation in McIntyre v. Ohio Elections Commission, 514 U.S. 334, 342-43 (1995), there was no	

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	blanket prohibition on all anonymous campaign literature. Rather, the statute required disclosures from organizations that met contribution and expenditure thresholds. (n) Finally, the court rejected the argument that the statute's on-ad, top-five donor disclaimer requirement was a form of prohibited compelled speech. The disclosure requirements were content neutral and placed a minimal burden on speech. The speakers did not need to convey a message antithetic to its principles. See also Boone County Republican Party Executive Committee v. Wallace, 132 F.4th 406, 430 (6th Cir. 2025), rehearing en banc denied, 140 F.4th 797 (6th Cir. 2025), (three Kentucky Republican Party county executive committees challenged the Kentucky Registry of Election Finance's requirement that they register as a political issues committee to expend funds in support of a state constitutional amendment; when an executive committee collects more than $1,000 to support or oppose a ballot initiative, it must register as a political issues committee for that election, notify the public of what it plans to support or oppose, and indicate whether it plans to raise more than $5,000; the executive committee may retain its name and structure and the political issues committee may use the party name and share a chairperson and treasurer with the executive committee; the political issues committee must open a separate bank account separating political issues	

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	related funds from funds collected for supporting candidates, and must timely make reports leading up to an election and thereafter; "[T]he executive committees already comply with the same reporting requirements [as a political issues committee] except that they need not report in the lead up to the election. True, the Registry's aims might be achieved through some less burdensome means, such as by imposing a disclosure requirement on executive committees that raise and expend funds in support of an election, without first requiring the registration of a political issues committee. After all, the Registry already orders executive committees to make disclosures within 48 hours of an independent expenditure on behalf of a candidate. However, Bonta does not require the least restrictive means. And we can appreciate how registration of a political issues committee with a publicly disclosed purpose, bank account, and responsible organizational structure would serve the state's purpose of obtaining full and timely disclosure") (citations and footnotes omitted), petition for rehearing en banc denied, 140 F.4th 797 (Mem.) (6th Cir. 2025). Students for Life Action v. Jackley, 746 F. Supp. 3d 668 (D.S.D. 2024) (in granting the state's motion to dismiss, court upheld South Dakota statute that required on-ad disclaimers and disclosure statements for expenditures for independent communications that referred to a candidate or ballot question; the on-ad disclaimer provision required that ads costing over $100 identify who is making the	

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	independent communication expenditure for that communication, include a mailing and website address for the person or entity making the expenditure, and list the entity's top five contributors from the prior twelve months; disclosure statement provision required those making the expenditures file an independent communication expenditure statement with the South Dakota Secretary of State within forty-eight hours of the time the communication is disseminated, broadcast, or otherwise published). 25. (a) In No on E v. Chiu, 85 F.4th 493 (9th Cir. 2023), cert. denied, 220 L. Ed. 2d 10 (2024), the court applied exacting scrutiny, as interpreted by the Supreme Court in Americans for Prosperity Foundation v. Bonta, 141 S. Ct. 2373 (2021), and denied a motion for preliminary injunction to enjoin enforcement of a San Francisco ordinance that required a disclaimer of secondary-contributors. The disclaimer required certain committees in their political advertisements to list the major donors (the secondary contributors) to the top contributors (the primary contributors) to their committees. (b) Two judges, Susan P. Graber and Ronald M. Gould, issued an amended opinion upholding the ordinance. Judge Watford, who was on the panel that issued the original opinion of March 8, 2023 upholding the ordinance, left the court on May 31, 2023. The appellants filed a petition for rehearing en banc. Judge Graber recommended denial of	

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	the petition, and Judge Gould so voted. The full court was advised of the petition. A judge of the court requested a vote on en banc rehearing. The matter failed to receive a majority of votes of non-recused active judges in favor of en banc consideration. (c) Judge Collins dissented from the denial of rehearing en banc in an opinion joined by Judges Callahan, Ikuta, Bennett, R. Nelson, Lee, Bress, Bumatay, and VanDyke. (d) Judge VanDyke also dissented from the denial of rehearing en banc in an opinion joined by Judges Callahan, Ikuta, Bennett, R. Nelson, Collins, Lee, Bress, and Bumatay. (e) Under California state statute, political advertisements had to include the words, "[a]d paid for by [the name of the committee]." Cal. Gov't Code §84502(a)(1). They had to also state, "committee major funding from," followed by the names of the top contributors to the committee. Cal. Gov't Code §84503(a). Top contributors were defined as "the persons from whom the committee paying for an advertisement has received its three highest cumulative contributions of fifty thousand dollars ($50,000) or more." Cal. Gov't Code §84501(c)(1). (f) On November 5, 2019, San Francisco voters passed Proposition F, which broadened the disclaimer requirements for advertisements paid for by independent political	

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	committees. Under Proposition F, all committees making expenditures to support or oppose any candidates for City elective office or any City measure had to comply with the City's new disclaimer requirements in addition to the state's requirements. San Francisco Code §1.161(a). (g) Under the ordinance, ads run by primarily-formed independent expenditure and ballot measure committees had to include a disclaimer listing their top three contributors of $5,000 or more. San Francisco Code §1.161(a)(1). A primarily-formed committee was a committee that received $2,000 or more in contributions in a calendar year and was formed or existed primarily to support or oppose a single candidate, a single measure, a group of candidates being voted on in the same election, or two or more measures being voted on in the same election. Cal. Gov't Code §82047.5. (h) In addition, if any of the top three major contributors (the primary contributors) was a committee, the disclaimer also had to disclose the name of and dollar amount contributed by each of the top two major contributors of $5,000 or more to that committee (the secondary contributors). San Francisco Code §1.161(a)(1). The ad also had to inform voters that "[f]inancial disclosures are available at sfethics.org," or if the ad was an audio ad, provide a	

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	substantially similar statement that identified the website. San Francisco Code §1.161(a)(2). (i) Printed disclaimers that identified a "major contributor or secondary major contributor" had to list the dollar amount of the relevant contributions made by each named contributor. San Francisco Code §1.161(a)(1). Print ads had to include the disclaimers in text that was at least 14-point bold font. San Francisco Code §1.161(a)(3). Audio and video advertisements had to begin by speaking the required disclaimers of major contributors and secondary major contributors, but did not need to disclose the dollar amounts of their contributions. San Francisco Code §§1.161(a)(5) and 1.162(a)(3). In addition, video ads had to display a text banner that contained similar information to that required in print ads. Cal. Gov't Code §84504.1; San Francisco Code §1.161(a)(1). (j) The district court denied the motion for preliminary injunction on June 1, 2022. While the case was on appeal, the City amended the ordinance effective August 27, 2023 to create an exemption from the requirement to disclose the top two major donors (the secondary contributors) of committee contributors (the primary contributors) in the case of a print advertisement that was 25 square inches or smaller, or an audio or video advertisement that was 30 seconds or less. San Francisco Code §1.161(a)(1)(A)-(B).	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	(k) San Francisco's ordinance would require the following disclaimer on the print and video advertisements of No on E, San Franciscans Opposing the Affordable Housing Production Act, a primarily-formed independent expenditure committee that ran ads subject to the requirement of a disclaimer of secondary contributors: Ad paid for by San Franciscans Supporting Prop. B 2022. Committee major funding from: 1. Concerned Parents Supporting the Recall of Collins, Lopez and Moliga ($5,000) — contributors include Neighbors for a Better San Francisco Advocacy Committee ($468,800), Arthur Rock ($350,000). 2. BOMA SF Ballot Issues PAC ($5,000). 3. Edwin M. Lee Asian Pacific Democratic Club PAC sponsored by Neighbors for a Better San Francisco Advocacy ($5,000) — contributors include Neighbors for a Better San Francisco Advocacy Committee ($100,000), David Chiu for Assembly 2022 ($10,600). Financial disclosures are available at sfethics.org. (l) The Ninth Circuit applied exacting scrutiny, as interpreted by the Supreme Court in Americans for Prosperity Foundation v. Bonta, 141 S. Ct. 2373 (2021), and rejected a First Amendment challenge to the ordinance. The	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	court upheld the district court's denial of a motion for preliminary injunction barring enforcement of the ordinance. (m) The test for exacting scrutiny had three prongs: (i) whether there is a substantial relation between the challenged law and a sufficiently important governmental interest; (ii) the strength of the governmental interest had to reflect the seriousness of the actual burden on First Amendment rights; and (iii) while disclosure regimes do not have to be the least restrictive means of achieving their ends, they must be narrowly tailored to the government's asserted interest. (n) The court held that the secondary contributor requirement served the important governmental interest of providing information to voters about the source of election-related spending. The court pointed out that under Buckley v. Valeo, 424 U.S. 1, 66-67 (1976) (per curiam), disclosure of the sources of campaign funding was an important governmental interest. Disclosure provided the electorate with information as to where political campaign money comes from and how it is spent by the candidate. It allowed voters to place each candidate in the political spectrum more precisely than was often possible solely on the basis of party labels and campaign speeches. The sources of a candidate's financial support also alerted the voters to the interests to	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	which a candidate was most likely to be responsive and thus facilitated predictions of future performance in office. (o) Furthermore, understanding what entity was funding a communication allowed citizens to make informed choices in the political marketplace. An appeal to cast one's vote a particular way might prove persuasive when made or financed by one source, but the same argument might fall on deaf ears when made or financed by another. (p) The court then held that the secondary-contributor disclosure requirement was substantially related to the informational interest. Providing information to the electorate may require looking beyond the named organization that runs the advertisement. The secondary-contributor requirement was designed to go beyond the ad hoc organizations with creative but misleading names and show the actual contributors to such groups. (q) The court also rejected the argument that the secondary-contributor disclosure requirement could cause confusion because a committee had to list donors who may not have any position on the issue that the ad was addressing, or who may not have known that their donation would be used to promote the views in the ad. However, the challengers provided no factual basis for their assumption that San Francisco voters were unable to distinguish between supporting a group that broadcasts a statement and	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	supporting the statement itself. In addition, adopting the challengers' position could call into question the logic underlying decisions that upheld disclosure and disclaimer requirements as applied to primary donors. Those cases emphasized that the laws before the court furthered the governmental interest in revealing the source of campaign funding, not ensuring that every donor agreed with every aspect of the message. Human Life of Washington v. Brumsickle, 624 F.3d 990, 1005-08 (9th Cir. 2010), cert. denied, 562 U.S. 1217 (2011); California Pro-Life Council, Inc. v. Getman, 328 F.3d 1088, 1104-07 (9th Cir. 2003). (r) The court then held that given the strength of the governmental interest in providing voters with information about the source of funding for political advertisements, the burdens imposed by the ordinance were consistent with the First Amendment. As to the claim that the required disclaimer displaced an excessive amount of speech, the City represented that it would not enforce the ordinance where the required disclaimer would consume the majority of the advertisement. As a result, the required disclaimers subject to enforcement were: (i) the written disclaimer on video ads that would take up a portion of the screen for up to 33% of the ad's duration; and (ii) the written disclaimer that would take up 35% of a five-inch by ten-inch ad or 23% of an 8.5 inch by 11-inch mailer.	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	(s) As to the requirement that the display of the disclaimer would take up to 33% of a video ad's duration, in Citizens United the Court upheld a law that required 40% of a video advertisement's duration to be devoted to the display of a written disclaimer. 558 U.S. at 320, 366-68. In addition, in an earlier challenge to the ordinance, the district court held that the secondary contributor requirement was not unduly burdensome for larger ads in which the disclaimer took up less than 40% of the ad, and that the remaining space was sufficient to communicate the speaker's political message. Yes on Prop B, Committee in Support of the Earthquake Safety & Emergency Response Bond v. City & County of San Francisco, 440 F. Supp. 3d 1049, 1055-57 (N.D. Cal. 2020), appeal dismissed as moot, 826 Fed. App'x 648 (Mem) (9th Cir. 2020). (t) As to the requirement that the disclaimer would take up 35% of a five-inch by ten-inch ad or 23% of an 8.5 inch by 11-inch mailer, the court rejected the argument that the size of the disclaimer was excessive under American Beverage Ass'n v. City & County of San Francisco, 916 F.3d 749 (9th Cir. 2019 (en banc). In that case the court invalidated a San Francisco ordinance requiring that certain printed beverage advertisements include a health warning that occupied at least 20% of the advertisement. (u) The court distinguished American Beverage on two grounds. First, the governmental interest in informing voters	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	about the source of funding for election-related communications was much stronger and more important than the governmental interest in warning consumers about the dangers of sugar-sweetened beverages. Second, the constitutional problem in American Beverage was that the City required a disclaimer that was twice as large as necessary to accomplish the City's stated goals. The challenged law mandated that, no matter the size of the ad, the health warning had to occupy at least 20% of the advertising space. Here, no evidence suggested that a smaller or shorter disclaimer would achieve the same effect as the required disclaimers. In addition, here a disclaimer's content and size varied depending on the number of secondary contributors and the size of the ad. Therefore, the size of the disclaimer was closely tailored to the governmental interest of informing the public about the source of funding and was not greater than necessary to accomplish that goal. Finally, the fact that the content of a required disclaimer was a major factor contributing to its length suggested that a smaller disclaimer would not be equally effective. (v) The court also rejected the argument that the secondary contributor requirement violated the right to freedom of association by driving away potential donors. This argument was insufficient to outweigh the strength of the governmental interests. The plaintiffs provided two declarations. One plaintiff asserted that potential donors expressed concern	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	about the secondary disclosure rules and were more reluctant to contribute to committees in which their donors had to be disclosed. Another plaintiff asserted that it would have to withdraw its donations from the committee and would have its own fundraising challenges if donors thought that their names might become public through the secondary contributor requirement. The court upheld the district court's finding that the plaintiffs failed to demonstrate that the secondary contributor requirement actually and meaningfully deterred contributors. Plaintiffs did not provide evidence of any specific deterrence beyond some donors' alleged desire not to have their names listed in an on-advertisement disclaimer. (w) In addition, the modest burden placed on plaintiffs' right to associate anonymously was outweighed by the competing First Amendment interests of individual citizens seeking to make informed choices in the political marketplace. (x) Finally, the court held that the narrow tailoring requirement was satisfied. There was a close fit between the ordinance and the government's informational interest. Because of its instant accessibility, an on-advertisement disclaimer was a more effective method of informing voters than a disclosure that voters had to seek out in an online database. See Gaspee Project v. Mederos, 13 F.4th 79, 91 (1st Cir. 2021) (an on-ad donor disclaimer is not entirely redundant to the donor information in public disclosures	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	because it provides an instantaneous heuristic by which to evaluate generic or uninformative speaker names), cert. denied, 142 S. Ct. 2647 (2022). (y) Furthermore, by donating to a primarily-formed committee, a secondary committee made an affirmative choice to engage in election-related activity. If a secondary committee were to purchase and run an advertisement opposing a ballot measure directly, donors would be subject to California's disclaimer requirements, which plaintiffs did not challenge. That law's application did not depend on whether the top donors earmarked their contributions for electioneering, or on whether they supported the content of the advertisement. The City's ordinance did not violate narrow tailoring just because the secondary committee funneled its donations through a separate committee instead of running its own advertisements. See also Students for Life Action v. Jackley, 746 F. Supp. 3d 668, 699 (D.S.D. 2024) (in granting the state's motion to dismiss, court upheld South Dakota statute that required on-ad disclaimers and disclosure statements for expenditures for independent communications that referred to a candidate or ballot question; the on-ad disclaimer provision required that ads costing over $100 identify who is making the independent communication expenditure for that communication, include a mailing and website address for the person or entity making the expenditure, and list the	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	entity's top five contributors from the prior twelve months; disclosure statement provision required those making the expenditures file an independent communication expenditure statement with the South Dakota Secretary of State within forty-eight hours of the time the communication is disseminated, broadcast, or otherwise published) ("The fact that the disclaimer consumes space or time in a communication that the speaker would have used in a different manner similarly does not thereby make the donor-disclosure requirement not narrowly tailored."). (z) Judge Collins, in his opinion dissenting from the denial of the petition for rehearing en banc, argued that the San Francisco ordinance commandeered political advertising to an intrusive degree that exceeded what the case law allowed in commercial advertising. The ordinance as amended and applied to the challengers meant that: (i) the written disclaimer would take up 35% of a five-inch by ten-inch ad, and 23% of the face of an 8.5-inch by 11-inch mailer; (ii) the written disclaimer on video ads would take up between 35% and 51% of the screen while displayed; and (iii) the spoken disclaimer would take up 53-55% of a sixty second ad. (aa) In requiring the additional disclosures, the City's ordinance piggybacked onto the disclosure requirements of Chapter 4 of California's Political Reform Act, California Government Code §84100 et seq. San Francisco Campaign & Government Conduct Code §1.161(a). For printed ads,	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	those disclosure requirements specified that the disclosure area have a solid white background and be in a printed or drawn box on the bottom of at least one page that is set apart from any other printed matter. California Government Code §84504.2(a)(1). Although the Political Reform Act only required the text of disclaimers to be in 10-point font, the City's ordinance generally required the use of 14-point bold font. California Government Code §84504.2(a)(2); San Francisco Campaign & Government Conduct Code §1.161(a)(3). (bb) Given these baseline requirements, the additional words required by the City's ordinance resulted in a substantial takeover of the physical space of the political ads. (cc) The holding of American Beverage properly recognized that, at some point, the sheer size and intrusiveness of a disclaimer requirement threaten to drown out the speaker's message and effectively rule out the possibility of having an advertisement in the first place. 916 F.3d at 757; see also National Institute of Family & Life Advocates v. Becerra, 138 S. Ct. 2361, 2378 (2018) (court made a similar observation in striking down required disclaimers in the advertisements of certain unlicensed providers of pregnancy-related services). Taking such a large percentage of the physical space of an ad inevitably diluted the speaker's message in a way that crowded out that message and impeded its effectiveness. Viewed in light of the seriousness	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	of the actual burden on First Amendment rights, the panel's take-as-much-as-you-need approach to burdening political speech was contrary to American Beverage and NIFLA and was anathema to the First Amendment. (dd) Furthermore, the panel's opinion inexplicably ignored the percentage of physical space consumed by the required visual video disclaimer and addressed only the percentage of the time in which that disclaimer had to be displayed. The baseline established by the California Political Reform Act was that the required disclaimers had to appear on a solid black background on the entire bottom one-third of the television or video display screen. California Government Code §84504.1(b)(1). Here the City's much lengthier disclosure requirements would often require more than one-third of the screen. (ee) This commandeering of such a substantial portion of the visual space of the ad raised concerns about crowding out the speaker's message and impeding effective communication. This intrusion into political speech exceeded what the Supreme Court upheld in Citizens United, in which the challenged disclaimer had to be displayed on the screen in a clearly readable manner for at least four seconds and consisted of: (i) the statement that "___ is responsible for the content of this advertising;" (ii) a statement that the communication "is not authorized by any candidate or candidate's committee;" and (ii) "the name and address (or	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	Website address) of the person or group that funded the advertisement." 558 U.S. at 366. Under American Beverage and NIFLA, the ordinance's commandeering of 23%, 35%, or 51% of the physical space of a political ad was unduly burdensome and violated the First Amendment. (ff) Finally, the panel failed to address the constitutionality of having spoken disclaimers take up more than half of a 60-second audio or video ad. This burden was imposed on top of the already unduly burdensome seizure of 35% to 51% of the ad's visual space for as much of a third of the ad's running time. Judge Collins rejected the panel's holding that it was unnecessary to address this issue because San Francisco had committed not to enforce the spoken disclaimers on digital and audio advertisements of 60 seconds or less. In its recently enacted amendment, San Francisco exempted only audio or video ads of 30 seconds or less, rather than 60 seconds or less. By adopting a lesser cut-off than the one it had committed to follow in the district court and this court, San Francisco called into question the reliability of the representations on which the panel relied. (gg) Judge VanDyke, in his opinion dissenting from the denial of the petition for rehearing en banc, argued that the San Francisco ordinance failed to advance an important government interest. Rather, it unduly burdened the associational rights of political speakers, their contributors, and their contributors' contributors by requiring political	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	speakers to disclose on political advertisements the names of both their own contributors and their contributors' contributors. It also unduly burdened political speakers' free speech rights by requiring they change their message to ostensibly advance the government's informational interests. (hh) The thrust of Judge VanDyke's argument was that by contributing to an organization, contributors do not necessarily endorse other entities that the organization may choose to fund: A man may be known by the company he keeps, but not by the company that his company keeps, particularly when his company's company isn't also his company. Put differently, a man may be known by the company that *he* opts to keep, but he is not known by the company once-removed with whom he has not opted to associate or disassociate– indeed, who he may not even know exists. Nor is the panel's leap precedented. Until this case, we have never blessed the compelled disclosure of secondary contributors. Our court should have taken the opportunity to correct en banc this unjustified First Amendment intrusion. [85 F.4th at 518-19] (ii) Todd David formed San Franciscans Supporting Prop B ("SPB"). After the June 2022 election in which San Franciscans adopted Proposition B, SPB changed its name twice in short succession, ending with its current name, No on E. Proposition F inhibited SPB's contributors from freely	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	associating with, and speaking through, SPB. Ed Lee Dems financially contributed to SPB and supported the passage of Proposition B. But the treasurer for Ed Lee Dems declared that if SPB were to issue ads triggering Proposition F's on-ad disclosure requirement, then Ed Lee Dems would withdraw its support and request its money be returned. Withdrawal would be necessary because Ed Lee Dem's donors contribute to Ed Lee Dems to support any of its various goals and projects, and some donors do not support all of its goals and projects. Some of these donors would be upset to end up on disclaimers on issues that they have no interest in, or even have contrary positions on, such as SPB. These donors would withdraw their support if they knew that Ed Lee Dems supported groups making communications that triggered such on-communication disclosure. (jj) As an example of the confusion and compelled association Proposition F triggered, the treasurer for Ed Lee Dems reported receiving more than $5,000 from David Chiu for Assembly 2022. But Chiu's 2022 candidacy for the assembly seat ended and he was now the City Attorney. Listing David Chiu for Assembly 2022 as a secondary contributor to SPB would mislead voters into believing that the City Attorney was running for another office and improperly taking positions on issues, thereby damaging Mr. Chiu's reputation.	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	(kk) The ordinance compelled unwanted associations by requiring political speakers to give the appearance of affiliation with secondary contributors, despite the lack of any affirmative act giving rise to such an association. Both as a matter of logic and law, forcing the appearance of association was a form of forcible association. Cf. Boy Scouts of America v. Dale, 530 U.S. 640, 648 (2000). The ordinance did not merely require disclosure of anonymous association, as was the case for California's on-ad disclosure law. Rather, it forced the formation of associations. There was no logical reason to think that either a political speaker in accepting a contribution from a primary contributor, or a secondary contributor in contributing to that primary contributor, necessarily had any desire to associate with one another. (ll) Advertisements containing the name of a political speaker and the speaker's message as well as the names of secondary contributors would lead many to infer an association between the speaker and the secondary contributor: Such advertisements will often take the form of a radio ad that a citizen casually hears while driving to work or a poster someone sees from a distance while waiting in line to order his morning coffee, or any number of other ads delivered or consumed in a similarly fleeting manner. These citizens, who cannot rewind a radio ad or who must step forward in	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	line and order coffee, will rarely enjoy sufficient time or motivation to discern whether the secondary contributor actually endorses the political speaker. They will just remember the association (true or not) created by the mandatory disclosure. Indeed, that is precisely the result that Proposition F intends − otherwise, why compel such disclosure? … Proposition F thus causes the busy public to infer an association that people ordinarily would not infer if they had time or reason to fully understand the tenuous connection between political speakers and secondary contributors. [85 F.4th at 523-24 (footnote omitted)] (mm) Judge VanDyke also pointed out compelled association was not limited to fleeting advertisements: Even the most non-fleeting of advertisements poses this same risk because of how advertisements are commonly treated by the deluged citizenry. How often do people glance only for a moment at a detailed pamphlet they receive in the mail before throwing it in the garbage? Such a fleeting perusal of an otherwise thorough advertisement prompts quick inferences citizens would not make when situated to carefully consider the existence (or lack thereof) of a connection between political speakers and secondary contributors. [85 F.4th at 524 n. 8]	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	(nn) The harm of forced association was starkly visible in this litigation. No on E received funding from David Chiu for Assembly 2022. Listing David Chiu for Assembly 2022 as a donor on No on E's ads forced the appearance of association between Chiu, the current City Attorney for San Francisco defending this lawsuit, and No on E. The forced association created by listing Chiu on the ad was particularly problematic because the City Attorney was prohibited by law from taking positions on ballot measures. (oo) Judge VanDyke then rejected the panel's argument that by donating to a primarily formed committee, a secondary committee necessarily was making an affirmative choice to engage in election-related activity. The problem is that secondary contributors were being forcibly associated with entities with whom they never sought to associate. One should not be subjected to undesired and illogical forced associations because he voluntarily entered the political arena. (pp) Judge VanDyke also rejected the panel's argument that even if the challengers' were successful, secondary donors still would be subject to disclosure and publicly visible on government websites. The disclosure of such second-order connections through official records, which were usually investigated by those prepared to carefully consider whether	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	an association necessarily exists, such as journalist, would not risk the false inferences generated by on-ad disclosures. (qq) With respect to the challengers' First Amendment free speech rights, San Francisco did not have a sufficiently important interest in requiring disclosure of secondary contributors, which would likely only confuse many voters about who supported political ads. The premise on which the government's informational interest sits was that learning a political advertiser's financiers could serve as a reasonable proxy for informing the voter of where the speaker falls on the political spectrum. (rr) Proposition F did not advance any government information interest because a voter could not reasonably infer any relevant information about a political speaker or an advertisement by knowing the speaker's secondary contributors. Secondary contributors may contribute to the primary contributor for a variety of reasons unrelated to the primary contributor's support for a political speaker. This was exactly what Ed Lee Dems' treasurer declared regarding its contributors. (ss) Worse than compelling the disclosure of information that furthered no sufficiently important government interest, Proposition F encouraged voters to draw inaccurate conclusions:	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	When voters view these ads with their on-ad secondary contributor disclosures, one of two things will happen. Either the busy voter will be confused and believe that a secondary contributor − who has taken no action to support the advertisement or its speaker − endorses the speaker and the advertisement, or the voter will recognize that no relationship between the two can be inferred. The first, as explained earlier, is more likely to occur and not only fails to advance the government's interest in informing voters, it undermines that interest by *mis*informing the voter. And in the rare instances where voters properly draw no inference about a relationship between the speaker and secondary contributors, no governmental interest is furthered, Either way, Proposition F does not further any sufficiently important government interest. [85 F.4th at 527-28] (tt) Judge VanDyke then rejected the panel's argument that Proposition F advanced the government's interests because primary donors were often committees in their own right, and may use creative but misleading names. This reasoning perhaps explained why San Francisco adopted the ordinance, but it did not show that Proposition F advanced San Francisco's informational interest. The interest might be advanced if voters could know, when they saw a secondary contributor's name, whether that secondary contributor intentionally supported the political speaker and was only a secondary contributor because it was trying to	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	hide the source of funding. But Proposition F's requirements would never provide such information through on-ad disclosures. Moreover, for those donors who wanted to hide their identities, most sophisticated election financiers would funnel their money through an additional opaquely named committee to avoid identification. (uu) Judge Vandyke also rejected the panel's argument that one could not infer that voters would be confused into believing secondary contributors endorsed the speaker or message unless the challengers provided affirmative proof. However, a court does not require empirical proof before it can reach a logical conclusion. Common sense dictates that when election season brings on a deluge of political advertisements, voters will reflexively conclude a connection exists between an ad and the names that appear on it. (vv) Moreover, when voters were not confused or misled, then Proposition F still did not advance the government's interest, because in that instance Proposition F effectively did nothing. For those voters who were not confused, they would know that the identity of a secondary contributor only allowed them a chance to guess at whether the secondary contributor was or wasn't supportive of the ad. Encouraging voter speculation did not advance any government interest.	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	Cf. Center for Civic Action v. City of Albuquerque Board of Ethics and Campaign Practices, 2025 WL 3485749 (D.N.M. Dec. 4, 2025) (rules of the City of Albuquerque City Clerk required disclaimers in campaign materials for independent expenditures, coordinated expenditures, and measure finance committees to contain the words "Top Five Donors" followed by a list of the five persons or entities making the largest aggregate donations to the entity during the twelve months before the date of the communication, and as to secondary donors if any of the top five donors was a committee, organization, or other entity the disclaimer had to disclose the name of the top two donors of $1,000 or more to that committee, organization, or other entity; court held that the secondary donor disclaimer was not substantially related to the government's informational interest; "Including the name of a secondary contributor alongside the actual political speaker invites voters to infer an association that does not exist. That inference will often be wrong. For example, if an individual donates a large amount to Organization X because they support its cause, and Organization X later becomes one of the Plaintiffs' top five donors, that individual's name would appear on the Plaintiff's advertisement despite the individual having no knowledge of − or endorsement of − the Plaintiffs' political message. That disclosure does not advance the City of Albuquerque's interest in identifying the true speaker. It distorts it;" court also held that neither the secondary donor	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	disclaimer nor the Top Five Donors disclaimer was narrowly tailored; secondary donor disclaimer required disclosure even when the individual donor has not earmarked funds for political activity and may be entirely unaware that the organization used its funds for a top-five contribution to Plaintiffs; faced with the choice between speaking and exposing donors who reasonably expected anonymity in non-electoral giving, organizations will predictably choose silence; this chilling effect underscores why the City's secondary donor disclosure requirement is not narrowly tailored; if any of the top five donors is a committee, organization, or other entity, the advertiser must disclose the top two contributors of $1,000 or more to that entity, regardless of whether those contributors earmarked their funds for electioneering or even knew their money would reach the advertiser; similarly, the top five donor disclaimer required disclosure of the top five donors who made the largest aggregate contributions to an organization in the last twelve months regardless of whether those funds were earmarked or even permitted for electoral use; in No on E v, Chiu, Proposition F required disclosure of only the top three contributors who gave $5,000 or more, but the City of Albuquerque required disclosure of the top five donors with no minimum monetary threshold; faced with the prospect of having major donors publicly identified as supporting electoral activity when they expressly capped or restricted such use, the organization has a powerful	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	incentive not to engage in electoral speech at all, precisely the dynamic the First Amendment forbids). 26. (a) In Americans For Prosperity v. Meyer, 2026 WL 2934861 (9th Cir. Sept. 30, 2026), the Ninth Circuit Court of Appeals in a 2-1 decision applied exacting scrutiny to uphold the reporting and disclosure provisions of Proposition 211, otherwise known as the Voters' Right to Know Act, passed by Arizona voters in the November 2022 election. (b) Proposition 211 applies to a covered person, which is defined as "any person "whose total campaign media spending or acceptance of in-kind contributions to enable campaign media spending, or a combination of both, in an election cycle is more than $50,000 in statewide campaigns or more than $25,000 in any other type of campaigns. A.R.S. §16-971(7). Excluded from this definition are individuals who spend their own funds on campaign media spending, any organization that spends its own business income on campaign media spending, any "candidate committee," and any "political action committee" that receives no more than $20,000 "from any one person in an election cycle." A.R.S. § 16-971(7)(b). (c) Proposition 211 requires every covered person to provide a disclosure report to the Arizona Secretary of State identifying each donor who directly or indirectly contributed	

ACTIVITY	FEDERAL ELECTION CAMPAIGN ACT OF 1971, AS AMENDED ("FECA")	INTERNAL REVENUE CODE OF 1986, AS AMENDED ("I.R.C.")
STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	more than $5,000 of original monies used for campaign media spending, and the date and amount of each donor's contribution. A.R.S. § 16-973(A)(6). When a donation consists of a series of earlier donations, the disclosure report must identify any intermediary that has "transferred, in whole or in part, traceable monies of more than $5,000 from" another source. A.R.S. § 16-973(A)(7). Proposition 211 requires that the covered person disclose the identities of any intermediate donors and the original source whose contributions exceeded $5,000. All disclosure reports are made available to the public by the Secretary of State. A.R.S. § 16-973(H). (d) "Original monies" means business income or an individual's personal monies. A.R.S. § 16-971(12). "Campaign media spending" is defined as "spending monies or accepting in-kind contributions to pay for" an enumerated list of election-related communications and partisan political activities, such as express advocacy for or against candidates for office, state and local initiatives, and referenda. A.R.S. §16-971(2)(a)(i)–(vii). (e) Proposition 211 also imposes recordkeeping requirements for covered persons. The law requires a covered person to maintain "transfer records" that identify the persons and entities who contribute more than $2,500 toward campaign media spending. A.R.S. §16-972(A). A	

ACTIVITY	FEDERAL ELECTION CAMPAIGN ACT OF 1971, AS AMENDED ("FECA")	INTERNAL REVENUE CODE OF 1986, AS AMENDED ("I.R.C.")
STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	natural person or entity who donates more than $5,000 to a covered person during an election cycle must, upon the covered person's written request, disclose the identity of every "person that directly or indirectly contributed more than $2,500" of the funds being donated. A.R.S. §16-972(D). The direct donor must also identify any previous transfers of more than $2,500. Thus, if a donation larger than $5,000 to a covered person is comprised of other donations that exceed $2,500, the donor must identify the source of those prior donations to the covered person upon request. Donors and intermediaries that trigger these spending thresholds must be identified until the source of the "original monies" is identified. (e) Transfer records must be maintained by covered persons for at least five years and be made available to the Citizens Clean Elections Commission ("Commission") upon request. A.R.S. §16 972(A), (D). (f) A "transfer record" is "a written record of the identity of each person that directly or indirectly contributed or transferred more than $2,500 of original monies used for campaign media spending, the amount of each contribution or transfer and the person to whom those monies were transferred." A.R.S. §16-971(19). Transfer records are maintained by covered persons and only provided to the Commission upon request. A.R.S. §16-972(A). Absent such	

ACTIVITY	FEDERAL ELECTION CAMPAIGN ACT OF 1971, AS AMENDED ("FECA")	INTERNAL REVENUE CODE OF 1986, AS AMENDED ("I.R.C.")
STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	a request, transfer records are not made available to the public. (g) Proposition 211 also provides that the Commission shall establish disclaimer requirements for public communications by covered persons. A.R.S. §16-974(C). At a minimum, the disclaimer must state "the names of the top three donors who directly or indirectly made the three largest contributions of original monies during the election cycle to the covered person." (h) Proposition 211 provides several safeguards for donors to avoid having their donations be used for campaign media spending and therefore be subject to public disclosure. First, Proposition 211 provides that "[b]efore the covered person may use or transfer a donor's monies for campaign media spending, the donor must be notified in writing that the monies may be so used and must be given an opportunity to opt out of having the donation used or transferred for campaign media spending." A.R.S. §16 972(B). (i) Notice to such donors must advise that their donations may be used for campaign media spending, that their identifying information may be disclosed to the appropriate government authorities and to the public, and that donors can "opt out of having the donation used or transferred" for campaign media spending. A.R.S. §16-972(B)(1)–(3). A	

ACTIVITY	FEDERAL ELECTION CAMPAIGN ACT OF 1971, AS AMENDED ("FECA")	INTERNAL REVENUE CODE OF 1986, AS AMENDED ("I.R.C.")
STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	covered person may then use or transfer the donation only if the donor "provides written consent" to the intended use or does not opt out within twenty-one days of receiving notice. A.R.C. §16-972(C). (j) Second, if the identity of an original source "is otherwise protected from disclosure by law or a court order," the covered person may not disclose the source's identity. A.R.S. §16-973(F). Third, if the covered person demonstrates to the satisfaction of the Commission that there is "a reasonable probability that public knowledge of the original source's identity would subject the source or the source's family to a serious risk of physical harm," the covered person is prohibited from disclosing the source's identity. (k) Proposition 211's notice and opt-out provisions apply not only to direct donors of covered persons but also indirect donors as well. See Center for Arizona Policy Inc. v. Arizona Secretary of State, 592 P.3d 75, 101–02 (2026). Proposition 211's "disclosure obligation is triggered only by "traceable monies," which the statute defines in part as "only monies for which no donor has opted out of their use or transfer for campaign media spending." Id. at 102 (quoting A.R.S. §§ 16-971(18)(a), 16 973(A)(6)). Therefore, "[w]hen donated original monies pass through several hands, the statute continues to account for their source and	

ACTIVITY	FEDERAL ELECTION CAMPAIGN ACT OF 1971, AS AMENDED ("FECA")	INTERNAL REVENUE CODE OF 1986, AS AMENDED ("I.R.C.")
STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	transfer history but permits disclosure only if the donor contributed traceable monies—that is, monies for which the donor, whether immediate or upstream, was given notice and an opportunity to opt out of permitting the donation to be used or transferred for campaign media spending." Id. (l) Proposition 211 is aimed at Section 501(c)(4) organizations that are not required to disclose their donors under the Internal Revenue Code. For example, it requires a Section 501(c)(4) organization that spends more than $50,000 on campaign media spending supporting or opposing an Arizona gubernatorial candidate to disclose all donors whose contributions of $5,000 or more fund the advertisements. If the Section 501(c)(4) organization contributed $5,000 or more to another organization, such as a super PAC, that paid for the advertisements, the super PAC must disclose contributions of $5,000 or more from the Section 501(c)(4) organization and the original sources that contributed to the Section 501(c)(4) organization. (m) In light of Proposition 211, donors of $2,500 or more to politically active Section 501(c)(4) organizations should conduct due diligence to determine whether they are contributing to a covered person, and if the recipient is not a covered person, whether the recipient may transfer the funds to a covered person to fund campaign media spending. Donors should also consider whether to elect Proposition	

ACTIVITY	FEDERAL ELECTION CAMPAIGN ACT OF 1971, AS AMENDED ("FECA")	INTERNAL REVENUE CODE OF 1986, AS AMENDED ("I.R.C.")
STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	211's opt-out provision and direct that their contributions be used for non-campaign media spending. If the recipient organization does not conduct non-campaign media spending, it will decline to accept the contribution. (n) In the majority opinion, Judges Johnnie B. Rawlinson and Gabriel Sanchez found a sufficiently important governmental interest in the disclosure of the sources of campaign funding. For the electorate to make informed decisions about candidates for office or issues placed on a ballot measure, it is essential that the public be given information as to where political campaign money comes from and how it is spent. The disclosure of relevant information about the donors and backers of political causes alert the voter to the interests to which a candidate is most likely to be responsive, and enables the public to give proper weight to different speakers and messages and make informed choices in the political marketplace. (o) The governmental informational interest includes funding from indirect sources. The original source disclosure requirement is substantially related to the state's interest in ensuring that the public receives accurate information about the sources of campaign media spending in Arizona elections. Citing No on E, the court pointed out that the disclosure of secondary contributors of funds to political committees was substantially related to the government's	

ACTIVITY	FEDERAL ELECTION CAMPAIGN ACT OF 1971, AS AMENDED ("FECA")	INTERNAL REVENUE CODE OF 1986, AS AMENDED ("I.R.C.")
STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	informational interest because the interest in learning the source of funding for a political advertisement extends past the entity that is directly responsible. (p) The held that Proposition 211 imposes modest burdens on Arizonans' speech and associational rights. Its disclosure requirements impose no ceiling on campaign-related activities and do not prevent anyone from speaking. Nor does the law limit how much money can be spent on campaign media or restrict the content of those communications. It instead requires disclosure of the original source of funds for major campaign media spending. The law also minimizes any potential burdens by permitting direct and indirect donors to opt out of having their contributions used for campaign media spending and by forbidding covered persons from publicly identifying original sources if such disclosure could result in a serious risk of physical harm. (q) The court found that the administrative burdens are minimally invasive, applicable only for large-money donations of more than $5,000 in traceable monies, and spread across several individuals and entities. When a covered person receives more than $5,000 from any donor, and upon the covered person's request, the donor must disclose in writing the source or sources of the donated	

ACTIVITY	FEDERAL ELECTION CAMPAIGN ACT OF 1971, AS AMENDED ("FECA")	INTERNAL REVENUE CODE OF 1986, AS AMENDED ("I.R.C.")
STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	funds. The donor must disclose the identity of all other contributors who donated more than $2,500 to that donation. (r) Although disclosure may deter some individuals who otherwise might contribute, disclosure requirements in most applications appear to be the least restrictive means of curbing the evils of campaign ignorance and corruption. Moreover, Proposition 211's disclosure requirements are triggered only when a direct or indirect donor has been given the opportunity to opt out of the use of their donations for campaign media spending. (s) Finally, the court held that the original source requirement is narrowly tailored to the state's interest in disclosing only major contributors to campaign media spending in an election cycle. It requires disclosure of covered persons and donors only when an entity spends $50,000 or more on campaign media to influence statewide elections or $25,000 or more for other types of elections. The law narrows its reach further by requiring disclosure of only direct contributors who give more than $5,000 to a covered person. Where that donation is comprised of earlier indirect donations of more than $5,000, only then is the original source and intermediaries to that donation also reported to the Commission. Finally, the opt-out provision gives direct and indirect donors the ability to avoid public disclosure by declining to have their donations be used or transferred to an	

ACTIVITY	FEDERAL ELECTION CAMPAIGN ACT OF 1971, AS AMENDED ("FECA")	INTERNAL REVENUE CODE OF 1986, AS AMENDED ("I.R.C.")
STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	entity for campaign media spending. Taken together, Proposition 211 represents a reasonable fit between the state's asserted informational interest and a disclosure mechanism that reaches only major contributors of campaign media spending who have not opted out from disclosure. (t) In a dissenting opinion, Judge Patrick J. Bumatay wrote that Proposition 211 failed exacting scrutiny. First, Proposition 211 is not substantially related to a sufficiently important governmental interest. It does little to combat quid pro quo corruption of contributions in exchange for official action. It expressly exempts political candidates or their committees. Instead, it only requires disclosure when certain groups with no direct connection to political candidates spend money to affect Arizona politics. And given its infinite-lookback regime, it forces disclosure of donors who may have not intended to contribute to political speech. So Proposition 211 does nothing to stop the historical understanding of corruption. (u) Second, Proposition 211 is not justified by assisting Arizona voters in making informed election decisions. Given that Proposition 211 mandates the disclosure of donors who may not intentionally or knowingly support or oppose specific political activity in Arizona, it doesn't substantially relate to a sufficiently important governmental	

ACTIVITY	FEDERAL ELECTION CAMPAIGN ACT OF 1971, AS AMENDED ("FECA")	INTERNAL REVENUE CODE OF 1986, AS AMENDED ("I.R.C.")
STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	interest. Recall that the law requires that if anyone, anywhere, and for any reason, donates more than $5,000 in two years to any organization − charitable, religious, political, or otherwise − and the money ends up being spent on a political matter in Arizona, then the person's name, address, and employer can be publicly exposed. The donor need not intend for the $5,000 to be used in a particular Arizona campaign. Indeed, indirect donors need not even know who or what is on the ballot. And though Proposition 211 has been interpreted to offer an opt-out for upstream contributors, the notice requirement is so lacking in detail that indirect donors will have little to any say on whether their monies can be used for specific political purposes. (v) And because Proposition 211 disregards the specific intent or knowledge of donors and only focuses on the campaign media spending of covered persons, voters are given incomplete information about who is purposefully supporting political activity in Arizona. Without any particularized intent requirement, a secondary or tertiary or quaternary or quinary contributor logically does not endorse a political speaker or the speaker's message by funding a primary contributor. For example, imagine a pro-life Catholic nun in Oregon. Say she donates $50 per week to a social justice organization in California focused on homelessness; in turn that organization ends up giving more than $5,000 to a pro-choice advocacy group in Arizona that	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	spends money on political activity. As a result, the pro-choice advocacy group must put the Catholic nun's name on all its public donor reports. Yet how are these reports informing voters, rather than misleading them, by linking our nun to the pro-choice movement? Arizona has not shown how this forced association would matter to voters. (w) The holding of No on E does not save Proposition 211. In No on E the court approved a city ordinance requiring covered entities' political advertising to include a disclaimer of their top three contributors. The ordinance also required including secondary contributors if any of the top contributors were political committees. The court justified the secondary-contributor requirement in part because it made it more difficult to hide the sources of funding for political advertisements. Proposition 211 is vastly more expansive. No on E only permitted disclosure of indirect donors one degree removed from political spending, and was limited to a disclaimer of the top three contributors. But the government's interest in providing the public with donation information diminishes the further it moved away from the actual political spending. Arizona's regime allows for disclosure regardless of the original donor's specific intent and regardless of whether the monies passed through one or more intermediaries. It requires an infinite look-back, meaning that covered persons must trace and disclose every direct or indirect contributor through innumerable layers of	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	intermediaries without looking to original donors' intentions. (x) The burdens placed on donors' First Amendment associational rights are excessive. Its administrative requirements and doxxing threat together pose a widespread burden on political speech that cannot outweigh its interest in informing voters about those who donate to political spending in the state. Proposition 211 risks doxxing donors with little connection to political activity in Arizona. The burdens lead to an unacceptable chilling of speech. Rather than submitting themselves to onerous investigative and reporting requirements, advocacy organizations will forgo political speech. Rather than face public exposure, forced associations, and doxxing, donors will stop contributing. (y) Finally, Proposition 211 fails narrow tailoring. Its infinite look-back mandate targets donors with the faintest connection to Arizona politics. The farther away from the direct contribution to a political organization, the less useful the information becomes to the electorate. In addition, Proposition 211 sweeps in donors who made no affirmative choice to engage in election-related activity. (z) Furthermore, Proposition 211's disclosure requirement applies to donations made over two years. So a donor may give to an organization long before any election-related	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	spending when political spending was unforeseeable. The exposure of indirect donors' occupations and employers in publicly available reports is more likely to lead to harassment of donors and their employers than to offer useful information to voters. (aa) Lastly, the exemption for labor unions and membership organizations if they don't collect more than $5,000 in dues per member in a calendar year shows a lack of narrow tailoring. Compare a union with Americans for Prosperity. A union can collect $10,000 from its members in a two-year election period and can then plow unlimited amounts of money directly into political activity without having any reporting obligation. But if Americans for Prosperity collects the same $10,000 from several supporters in the two-year period and spends enough on campaign-related speech, it is subject to Proposition 211 and must report those contributions. Arizona voters should have the same interest in knowing who is behind the political activity regardless of whether it is a union or an advocacy group. 27. (a) In Smith v. Helzer, 95 F.4th 1207 (9th Cir. 2024), cert. denied sub nom. Smith v. Stillie, 220 L. Ed. 2d 215 (2024), the court applied exacting scrutiny, as interpreted by the Supreme Court in Americans for Prosperity Foundation v. Bonta, 141 S. Ct. 2373 (2021), and applied in Gaspee Project v. Mederos, 13 F.4th 79 (1st Cir. 2021), cert. denied, 142 S. Ct.	

ACTIVITY	FEDERAL ELECTION CAMPAIGN ACT OF 1971, AS AMENDED ("FECA")	INTERNAL REVENUE CODE OF 1986, AS AMENDED ("I.R.C.")
STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	2647 (2022) and No on E v. Chiu, 85 F.4th 493 (9th Cir. 2023), cert. denied, 220 L. Ed. 2d 10 (2024), to reject a facial challenge to Alaska's statutory disclosure and disclaimer requirements for independent expenditures. The court denied a motion for preliminary injunction to enjoin enforcement of amendments to the campaign finance statute enacted as part of Ballot Measure 2 on November 3, 2020. (b) The first provision challenged and subject to the appeal was the amendment to Alaska Statute §15.13.040, which required every individual, person, nongroup entity, or group that contributes more than $2,000 in the aggregate in a calendar year to an entity that made one or more independent expenditures in one or more candidate elections in the previous election cycle, that is making one or more independent expenditures in one or more candidate elections in the current election cycle, or that the contributor knows or has reason to know is likely to make independent expenditures in one or more candidate elections in the current election cycle, to report the contribution to the state election agency within twenty-four hours of making it. The reporting contributor was also required to report the true sources of the contribution and intermediaries. In addition, the contributor was required to provide the identity of the true source to the recipient of the contribution simultaneously with providing the contribution.	

ACTIVITY	FEDERAL ELECTION CAMPAIGN ACT OF 1971, AS AMENDED ("FECA")	INTERNAL REVENUE CODE OF 1986, AS AMENDED ("I.R.C.")
STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	(c) Under Alaska Statute §15.13.390(a)(2)-(3), violations of the reporting requirements were subject to the following penalties. A person who, whether as a contributor or intermediary, delays in reporting a contribution is subject to a civil penalty of not more than $1,000 a day for each day the delinquency continues. A person who, whether as a contributor or intermediary, misreports or fails to disclose the true source of a contribution is subject to a civil penalty of not more than the amount of the contribution that is the subject of the misreporting or failure to disclose. Upon a showing that the violation was intentional, a civil penalty of not more than three times the amount of the contribution in violation may be imposed. (d) The second provisions challenged and subject to the appeal were Alaska Statute §15.13.090(c), which contained the following disclaimer requirement. A communication that includes a print or video component must have the following statement or statements placed in the communication so as to be easily discernible, and in a broadcast, cable, satellite, internet or other digital communication the statement must remain onscreen throughout the entirety of the communication; the second statement is not required if the person paying for the communication has no contributors or is a political party: This communication was paid for by (person's name and city and state of principal place of business). The top	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	contributors of (person's name) are (the name and city and state of residence or principal place of business, as applicable, of the largest contributions to the person …. (e) The amendment to Alaska Statute §15.13.090(a)(2)(C) and (c) was also challenged and subject to the appeal. This subsection provided that a communication paid for by an outside-funded entity that includes a print or video component must have the following statement placed in the communication so as to be easily discernible, and in a broadcast, cable, satellite, internet or other digital communication the statement must remain onscreen throughout the entirety of the communication; the statement is not required if the outside entity paying for the communication has no contributors or is a political party: A MAJORITY OF THE CONTRIBUTIONS TO (OUTSIDE-FUNDED ENTITY'S NAME) CAME FROM OUTSIDE THE STATE OF ALASKA. (f) A new subsection of Alaska Statute §15.13.110(k) provided that once contributions from an individual, person, nongroup entity, or group to an entity that made one or more independent expenditures in one or more candidate elections in the previous election cycle, that is making one or more independent expenditures in one or more candidate elections in the current election cycle, or that the contributor knows or has reason to know is likely to make independent expenditures in one or more candidate elections in the	

ACTIVITY	FEDERAL ELECTION CAMPAIGN ACT OF 1971, AS AMENDED ("FECA")	INTERNAL REVENUE CODE OF 1986, AS AMENDED ("I.R.C.")
STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	current election cycle exceed $2,000 in a single year, that entity shall report that contribution, and all subsequent contributions, not later than 24 hours after receipt. The entity is required to certify and report the true source, and all intermediaries of the contribution. (g) The court found that the disclosure requirements had a substantial and narrowly tailored relationship with the state's sufficiently important informational interest in providing voters with information related to the source of funds received by independent expenditure entities. The court rejected the argument that because existing criminal laws prohibit making and receiving straw-donor contributions, donations not made by true sources are illegal and reporting them would make little sense. Violation of the criminal regulation requires the offender to intend to make a straw-donor contribution, for example, by directing another to make the contribution or reimbursing them for doing so. The challenged contribution reporting requirement requires disclosure of contributions regardless of whether they were made at the true source's behest. Thus, the contribution-reporting requirement covers donations outside the limited reach of the criminal law. (h) The court also rejected the argument that the contribution-reporting requirement was unconstitutionally redundant. The contributor will always be in a better position to both identify the true source of its own	

ACTIVITY	FEDERAL ELECTION CAMPAIGN ACT OF 1971, AS AMENDED ("FECA")	INTERNAL REVENUE CODE OF 1986, AS AMENDED ("I.R.C.")
STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	contribution and quickly report it. The individual-donor contribution-reporting requirement works in concert with the recipient independent-expenditure organizations' disclosures, helping to ensure that the information received by voters is reliable and accurate. Prompt disclosure by both sides of a transaction ensures that the electorate receives the most helpful information in the lead-up to an election. (i) The court then held that the contribution-reporting requirement was not unduly burdensome. Since the court cannot consider hypothetical or imaginary cases to sustain a facial challenge, the plaintiffs failed to show that a substantial number of the applications of the contribution-reporting requirement are unconstitutional in relation to the law's plainly legitimate sweep. Contributors who hit the $2,000 threshold must fill out a short online form that asks for the amount of the triggering contribution, the aggregate total amount of their contributions, the name of the recipient independent-expenditure organization, and if the donor is not the true source of the funds, the true source's identity and the identities of any intermediaries. The simplicity of an online form and the required promptness of the disclosure both advance the state's interest in providing real-time and accurate information about electioneering communications. (j) Although the contribution-reporting requirement applies whenever the contributor donates to an organization that has	

ACTIVITY	FEDERAL ELECTION CAMPAIGN ACT OF 1971, AS AMENDED ("FECA")	INTERNAL REVENUE CODE OF 1986, AS AMENDED ("I.R.C.")
STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	made, will make, or is likely to make independent expenditures, the frequency of required reporting is limited to only continued political spending. Once the donor has hit the threshold and filled the form out once, they need only fill it out again if they continue making contributions to the independent-expenditure organization. The reporting requirement is reasonably tailored to the state's important interest in keeping the public informed. (k) As to the on-ad disclaimer requirements, the court held that the on-ad top-three donor disclaimer requirement was substantially related to the important governmental interest in an informed electorate and was narrowly tailored to further that interest. Donors are often committees themselves that often obscure their actual donors through misleading and even deceptive committee names. Relying on Gaspee Project, the court held that while voters have online access to donor information through the required disclosures to the state election agency, the on-ad placement of some of that information provides a more effective form of disclosure. Finally, the court rejected the argument that the on-ad disclaimers took up too much space on advertisements. (l) The court also upheld the out-of-state disclaimer requirement. The requirement did not limit how much out-of-state donors can give, nor did it burden out-of-state donors; rather it burdened independent expenditure entities	

ACTIVITY	FEDERAL ELECTION CAMPAIGN ACT OF 1971, AS AMENDED ("FECA")	INTERNAL REVENUE CODE OF 1986, AS AMENDED ("I.R.C.")
STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	that received over a certain percentage of their funds from out-of-state donors. Given the relatively minimal burden it imposes, there is a sufficiently substantial relation between the out-of-state disclaimer and the state's informational interest. The tailoring prong was satisfied because an on-ad disclaimer makes the information more accessible and presents it at a useful time for voters attempting to weigh competing political messages. See also Students for Life Action v. Jackley, 746 F. Supp. 3d 668 (D.S.D. 2024) (in granting the state's motion to dismiss, court upheld South Dakota statute that required on-ad disclaimers and disclosure statements for expenditures for independent communications that referred to a candidate or ballot question; the on-ad disclaimer provision required that ads costing over $100 identify who is making the independent communication expenditure for that communication, include a mailing and website address for the person or entity making the expenditure, and list the entity's top five contributors from the prior twelve months; disclosure statement provision required those making the expenditures file an independent communication expenditure statement with the South Dakota Secretary of State within forty-eight hours of the time the communication is disseminated, broadcast, or otherwise published). (m) One dissenting judge on the three-judge panel, Judge Forrest, found that plaintiffs' challenge to Ballot Measure	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	2's duplicative individual-donor reporting requirement is likely to succeed. (n) While there is no doubt that the donors are in the best position to know the true source of their donated funds, Ballot Measure 2 addressed this concern by requiring individual donors that give more than $2,000 to a single independent-expenditure entity in a year to provide to that entity the identity of the true source of the contribution simultaneously with the contribution. This undermines any suggestion that the independent-expenditure entities do not have access to this information. Likewise, there is every expectation that in submitting their reports, the independent-expenditure entities are simply going to parrot what their donors told them about the true sources of the contributions. (o) Individual donors face the burdens of reading and understanding the statute with the help of counsel, and to predict whether the entities that they are donating to are likely to make independent expenditures in one or more candidate elections in the current election cycle. (p) For example, the civically minded retiree who donates over $2,000 to any organization that supports or may support a candidate seeking election must know about the individual-donor reporting requirement and what it demands, determine whether her donation triggers a report, access the internet, register for a Commission account,	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	locate the required reporting form on the Commission website, and fill it out within 24 hours of making a triggering donation. If she fails to check every one of these boxes in time, she is on the hook for what could be significant fines. All of this so that the state can collect the same information from her that it receives from the organization to which she donated. (q) In addition, there is no reason for the limitless temporal bounds of the 24-hour reporting requirement. There is no justification for a strict enforcement regime that surveils year-round and imposes harsh penalties on contributors for potentially minor violations before, during, and after an election cycle. Even assuming that prompt disclosure is helpful to voters during an election cycle, why a 24-hour filing deadline is needed in the lulls between active elections is a mystery. (r) Finally, the dissenting judge concluded that it is reasonable to expect that the individual-donor reporting requirement risks chilling individual donors from fully participating in political expression. 28. (a) In Rio Grande Foundation v. Oliver, 154 F.4th 1213 (10th Cir. 2025), the court applied exacting scrutiny and upheld the district court's grant of summary judgment to the state in rejecting a challenge to New Mexico's statutory reporting requirements for independent expenditures. The	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	requirements applied to advertisements that refer to a clearly identified candidate or ballot question and is published and disseminated to the relevant electorate in New Mexico within thirty days before the primary election or sixty days before the general election at which the candidate or ballot question is on the ballot. (b) The plaintiff Rio Grande Foundation is a Section 501(c)(3) charitable organization. It publishes an online "Freedom Index," a legislative scorecard that tracks legislators' floor votes on bills that are important to the organization. The Freedom Index gives numerical scores to each legislator. Legislators who supported legislation RGF deems favorable receive higher scores in green, while those who did not support this legislation receive lower scores in red. (c) For independent expenditures of $3,000 or less in a nonstatewide election, or $9,000 or less in a statewide election, the person making the independent expenditure must disclose in a report to the Secretary the name and address of each person who has made contributions of more than a total of two hundred dollars ($200) in the election cycle that were earmarked or made in response to a solicitation to fund independent expenditures, and the amount of each such contribution. N.M. Stat. Ann. §1-19-27.3(C). For independent expenditures of more than $3,000 in a nonstatewide election or more than $9,000 in a	

ACTIVITY	FEDERAL ELECTION CAMPAIGN ACT OF 1971, AS AMENDED ("FECA")	INTERNAL REVENUE CODE OF 1986, AS AMENDED ("I.R.C.")
STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	statewide election, the statute provides that the person making such independent expenditures must either: (i) if the expenditures were made exclusively from a segregated bank account consisting only of funds contributed to the account by individuals to be used for making independent expenditures, report the name and address of, and amount of each contribution made by, each contributor who contributed more than two hundred dollars ($200) to that account in the election cycle; or (ii) if the expenditures were made in whole or part from funds other than those described in paragraph (i), report the name and address of, and amount of each contribution made by, each contributor who contributed more than a total of five thousand dollars ($5,000) during the election cycle to the person making the expenditures; provided, however, that a contribution is exempt from reporting pursuant to this paragraph if the contributor requested in writing that the contribution not be used to fund independent or coordinated expenditures or to make contributions to a candidate, campaign committee, or political committee. N.M. Stat. Ann. §1-19-27.3(D). (d) The court held that the state has an important interest in disclosing the funders of large advertisements about candidates and ballot measures shortly before an election, even when those advertisements do not take a position on a	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	candidacy. The disclosure helps the electorate make informed decisions and give proper weight to different speakers and messages that are trying to influence an election. (e) The court held that the disclosure obligations are substantially related to the state's important informational interest. Only donors who gave more than $5,000 to the general fund during the election cycle must be reported; thus targeting only large donors. The statute also has an opt-out provision whereby donors of more than $5,000 to the general fund can avoid their disclosure by submitting a written request that their contribution not be used for independent expenditures. The opt-out provision enhances the fit between the disclosures of general-fund donors and the public's informational interest. (f) The statute also has a minimum monetary threshold. It imposes reporting obligations for organizations only when independent expenditures exceed $3,000 in a statewide election or $1,000 in a non-statewide election. For groups meeting the $3,000/$1,000 threshold but spending less than $9,000 in a statewide election or $3,000 in a non-statewide election, the groups must disclose the name, address, and amount of contribution for each person who contributed more than $200 in an election cycle that were earmarked or made in response to a solicitation to fund independent expenditures. For groups spending over the $9,000/$3,000	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	levels, the disclosures of donors over $5,000 to the general fund apply. (g) In addition, the temporal limitations tighten the fit to the informational interest. The statute requires disclosure for communications that refer to a clearly identified candidate or ballot question within thirty days of a primary election and sixty days of a general election. These limitations create a substantial fit between the disclosures an the governmental interest. (h) Finally, the court held that the narrow tailoring requirement was satisfied. The monetary thresholds avoid targeting small-scale organizations spending too little and having too little influence to support a public informational interest. The temporal limitations and the targeting of ads disseminated to the relevant electorate tailor the law to ads that are intended to influence an election. Furthermore, opt-out features are an acceptable means of tailoring general fund disclosures to the informational interest, even if the entity to which donors contribute has not created a segregated fund. CASES STRIKING DOWN DISCLOSURE REQUIREMENTS 29. (a) In North Carolina Right to Life, Inc. v. Leake, 525 F.3d 274 (4th Cir. 2008), the court addressed the constitutionality of a North Carolina statute's definition of communications	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	that support or oppose a clearly identified candidate. If an individual financially sponsors a communication that meets either one of two prongs of the definition, he or she is deemed to have acted in support or opposition of a clearly identified candidate, and is subject to disclosure requirements. (b) The first prong classifies communications as supporting or opposing a clearly identified candidate when they explicitly use any of a set of carefully delineated election-related words or phrases. Examples include: "vote for," "reelect," "support," "cast your ballot for," and "(name of candidate) for (name of office)." North Carolina General Statutes §163-278.14A(a)(1). (c) The second prong considered a communication to be in support or opposition to a candidate if its "essential nature … goes beyond a mere discussion of public issues in that [it] direct[s] voters to take some action to nominate, elect, or defeat a candidate in an election. If the essential nature of a communication is unclear, regulators may consider: contextual factors such as the language of the communication as a whole, the timing of the communication in relation to events of the day, the distribution of the communication to a significant number of registered voters for that candidate's election, and the cost of the communication … in determining whether the action urged	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	could only be interpreted by a reasonable person as advocating the nomination, election, or defeat of that candidate in that election. [North Carolina General Statutes §163-278.14A(a)(2)] (d) The court struck down the second prong of the definition as unconstitutional under Wisconsin Right to Life. The statute crossed the boundary between election-related activity subject to regulation, and constitutionally protected political speech. First, the definition did not meet the definition of electioneering communication under FECA. Second, the statute violated the test for permissible regulation of campaign speech under Wisconsin Right to Life: [I]t cannot be said that communications falling within the ambit of §163-278.14A(a)(2) are "susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate." As stated earlier, *WRTL* specifically counseled against the use of factor-based standards to define the boundaries of speech subject to regulation, since such standards typically lead to disputes over their meaning and therefore litigation. *See WRTL*, 127 S. Ct. at 266. Section 163-278.14A(a)(2) runs directly counter to the teaching of *WRTL* when it determines whether speech is subject to regulation based on how a "reasonable person"	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	interprets a communication in light of four "contextual factors." This sort of *ad hoc*, totality of the circumstances-based approach provides neither fair warning to speakers that their speech will be regulated nor sufficient direction to regulators as to what constitutes political speech. The very terms of North Carolina's statute — including, but not limited to, "essential nature," "the language of the communication as a whole," "the timing of the communication in relation to events of the day," "the distribution of the communication to a significant number of registered voters for that candidate's election," and "the cost of the communication" — are clearly "susceptible" to multiple interpretations and capable of encompassing ordinary political speech unrelated to electoral activity. For instance, how is a speaker — or a regulator for that matter — to know how the "timing" of his comments "relate" to the "events of the day"? Likewise, how many voters would be considered "significant"? And at what "cost" does political speech become reusable? [525 F.3d at 283-84] 30. (a) In New Mexico Youth Organized v. Herrera, 2009 U.S. Dist. LEXIS 125104 (D.N.M. Aug. 3, 2009), the court addressed the constitutionality of New Mexico's statutory political committee registration and reporting requirements as applied to two Section 501(c)(3) organizations, New Mexico Youth Organized ("NMYO"), and Southwest Organizing Project ("SWOP").	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	(b) In March and April 2009, NMYO and SWOP mailed out advertisements criticizing several incumbent state legislators for the stances that they took on certain initiatives in the legislative session that had just concluded, pointing out the primary sources of the individual legislators' campaign funding, and urging recipients to contact the legislators to express their concerns about the legislators' votes and funding sources. The mailings suggested that the legislators were beholden to corporate interests rather than actually working for the public good. The mailings were targeted to the individual legislators' constituents, and each mailing mentioned an upcoming special legislative session focused on healthcare that was to take place in the summer of 2008. (c) The mailers sent out by NMYO and SWOP followed similar patterns in their style and content. Generally, the front of the card posed the question of whether the representative in question worked for constituents or special interests, while the back of the card listed the primary sources of the representative's campaign funding, highlighted the representative's recent votes on several bills, noted that a special session of the legislature focusing on healthcare was upcoming, and urged recipients to call the representative and ask that he represent their interests rather than corporate interests at the upcoming session. (d) The New Mexico Secretary of State sought to require NMYO and SWOP to register as political committees under	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	the New Mexico Campaign Reporting Act based solely on the mailings. (e) Under NMSA §1-19-26(L) of the Campaign Reporting Act, a political committee was defined as follows: L. "political committee" means two or more persons, other than members of a candidate's immediate family or campaign committee or a husband and wife who make a contribution out of a joint account, who are selected, appointed, chosen, associated, organized or operated primarily for a political purpose; and political committee includes: (1) political action committees or similar organizations composed of employees or members of any corporation, labor organization, trade or professional association or any other similar group that raises, collects, expends or contributes money or any other thing of value for a political purpose; (2) a single individual who by his actions represents that he is a political committee; and (3) a person or an organization of two or more persons that within one calendar year expends funds in excess of five hundred dollars ($500) to conduct an advertising campaign for a political purpose.	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	(f) Under NMSA §1-19-26(M) of the Campaign Reporting Act, political purpose was defined as "influencing or attempting to influence an election or pre-primary convention, including a constitutional amendment or other question submitted to the voters." (g) The registration requirements for political committees made it unlawful for a political committee to receive any contribution or make any expenditure unless the committee registered with the Secretary of State. Political committees had to file annual reports of contributions and expenditures, which included the name and address of the person or entity to whom an expenditure was made or from whom a contribution was received. NMSA §1-19-26.1, 27, 29, 31, 34.6, and 36(A). (h) The court addressed two issues. First, were the mailings issue advocacy constitutionally protected from the political committee registration requirement? Second, were the mailings a constitutionally sufficient basis to classify NMYO and SWOP as political committees subject to the Campaign Reporting Act's registration and reporting requirements? (i) The court held that the mailings were issue advocacy constitutionally protected from political committee registration requirements. Under Buckley v. Valeo, 424 U.S. 1, 80 (1976) (per curiam), only those activities that are	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	"unambiguously related to the campaign of a particular" candidate may constitutionally be subject to regulation. In addition, under Buckley only those contributions made directly to a campaign or in coordination with a campaign, or those independent expenditures "for communications that expressly advocate the election or defeat of a clearly identified candidate" are subject to regulation. 424 U.S. at 80. Furthermore, under WRTL, a communication is the equivalent of express advocacy only if it "is susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate." 551 U.S. 449, 470 (2007). (j) The court construed the New Mexico statute defining "political purposes" as "influencing or attempting to influence an election" to reach only those contributions or expenditures that are unambiguously campaign related in that they are used for communications that constitute express advocacy for the election or defeat of a clearly identified candidate, or its functional equivalent. Under this standard, the mailings of NMYO and SWOP were not unambiguously campaign related. They did not mention any future primary or general election in which the targeted legislators would be running. Instead, the mailings all referenced an upcoming special session of the legislature that was focused on healthcare, and urged recipients to contact their legislator with respect to that issue.	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	(k) The court also held that NMYO and SWOP could not constitutionally be classified as political committees. Under Buckley, a "political committee" can "only encompass organizations that are under the control of a candidate or the major purpose of which is the nomination or election of a candidate." 424 U.S. at 79. Under Colorado Right to Life Committee, Inc. v. Coffman, 498 F.3d 1137 (10th Cir. 2007), the major purpose test focused on the major purpose of the organization rather than a particular expenditure. A court determined an organization's major purpose by examining the organization's central organizational purpose, or comparing the organization's independent electioneering spending with its overall spending to determine whether the preponderance of expenditures is for express advocacy or contributions to candidates. (l) The court held that the New Mexico statute's definition of a political committee to include, by default, any organization that spent over $500 in one year on a political ad campaign, was unconstitutional as applied to NMYO and SWOP. The statute completely subverted Buckley's major purpose test "by classifying an electioneering expenditure greater than $500 as irrefutably constituting the organization's primary purpose, regardless of what percentage of operating funds the expenditure constituted or what else the organization spent its resources on. By defining spending over $500 on an election-related ad as	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	sufficient to subject an organization to the full panoply of regulations otherwise reserved solely for organizations whose primary purpose is to advocate for or against candidates, the statute renders the 'major purpose' test completely superfluous." 2009 U.S. Dist. LEXIS 125104, at *44-45. (m) Applying the New Mexico statute to NMYO and SWOP showed that the statute was overreaching in its coverage: NMYO's yearly budget is approximately $255,000. SWOP's yearly budget is approximately $1,100,000. Thus, under NMCRA, these organizations would be classified as "political committees" if they spent as little as 2/10 of one percent and 5/100 of one percent of their budgets, respectively, on electioneering communications. Taking it out of the realm of the hypothetical, in this case, NMYO spent approximately $15,000 on the mailings, which amounts to less than seven percent of its budget, and SWOP spent approximately $6,000 on the mailings, which amounts to just over 1/2 of one percent of its budget. Such proportionally small expenditures, standing alone, cannot justify characterizing an organization's "major purpose" as electioneering. A statute that subjects organizations to the burdens of registering as political committees based solely on such insubstantial expenditures is not narrowly tailored	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	and cannot survive exacting scrutiny. 2009 U.S. Dist. LEXIS 125104, at *46-47. (n) Finally, the court held that although the state can require disclosure of campaign related contributions and expenditures, it cannot require disclosure of every organizational contribution and expenditure if the organization's major purpose is not the nomination or election of a candidate. (o) The Tenth Circuit Court of Appeals affirmed the trial court. 611 F.3d 669 (10th Cir. 2010). Under the central purpose formulation or the expenditure formulation of the major purpose test, the organizations did not qualify as political committees. As to the central purpose test, neither organization ever advocated for the election or defeat of any candidate for office. NMYO's goals were to educate young New Mexicans on issues of importance to them, and to engage in research, leadership development, and nonpartisan get-out-the-vote activities. SWOP's goals were to empower Latino and other people of color, low-income individuals, and young people to realize racial and gender equality and social and economic justice, and to engage in nonpartisan get-out-the-vote activities, training and leadership development, and community development. As to the expenditure test, neither group spent a preponderance of its	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	expenditures on express advocacy or contributions to candidates. 31. (a) In Canyon Ferry Road Baptist Church v. Unsworth, 556 F.3d 1021 (9th Cir. 2009), the court addressed the constitutionality of Montana's statutory financial and organizational disclosure requirements for an incidental committee. (b) Montana statute required an incidental committee to report all transactions, regardless of the amount involved that qualify as expenditures or contributions, and are made by the committee in connection with a statewide issue. An incidental committee must make quarterly filings and at other times near an election. If an incidental committee makes a one-time political expenditure, it may file a combined initial and closing report that terminates its status. In either case, initial registration as an incidental committee must occur within five days of making a political expenditure. (c) Canyon Ferry Road Baptist Church, an incorporated religious institution located in East Helena, Montana, adhered to the Christian doctrines of the Southern Baptist Convention. Among these doctrines was the belief that marriage may exist only between one man and one woman.	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	In the spring of 2004, the Church's Pastor, Berthold Gotlieb Stumberg, III, became interested in possible ways in which the Church could assist in an effort to collect signatures to place Constitutional Initiative No. 96 ("CI-96") on the Montana state ballot the following November. If placed on the ballot and approved by Montana's voters, CI-96 would amend the Montana state constitution to define marriage as a union between one man and one woman. For the signatures to be effective, the signed petition forms had to be turned over to the sponsoring organization and then submitted to appropriate election officials no later than June 18, 2004. In May 2004, Terri Paske, a member of the Church who campaigned for CI-96, printed out a template CI-96 petition from the Montana Family Foundation website and made less than fifty copies of the petition on the Church's copy machine, using her own paper. With Stumberg's approval, Paske placed roughly twenty copies of the petition in the Church's foyer. (d) The court held that the disclosure requirements, as applied to the Church's one-time in-kind de minimis expenditures for the use of the copy machine and foyer, violated the Church's First Amendment rights. The test of constitutionality was whether the disclosure requirement had a substantial relation to an important state interest.	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	(e) The court found that the state's interest in providing its citizens with information about the constituencies supporting and opposing ballot issues was an important state interest. (f) The court found the constitutional defect in the failure of the informational value to the public derived from disclosure of the Church's de minimis in-kind expenditures to justify the burden imposed by the reporting requirement. The court held that "as the monetary value of an expenditure in support of a ballot measure approaches zero, the voters can learn little about the financial backing of the ballot proposition by access to information about the Church's activities of minimal economic effect. Meanwhile, the burden of reporting remains constant even though the size of the in-kind expenditure decreases to a negligible level." 556 F.3d at 1033-34. The court concluded that "the value of public knowledge that the Church permitted a single like-minded person to use its copy machine on a single occasion to make a few dozen copies on her own paper—as the Church did in this case—does not justify the burden imposed by Montana's disclosure requirements." 556 F.3d at 1034 (footnote omitted). 32. (a) In Sampson v. Buescher, 625 F.3d 1247 (10th Cir. 2010), the court relied on Canyon Ferry (discussed in Paragraph 31 above) and Citizens United in holding that application of Colorado's disclosure requirements for contributions to a	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	ballot initiative committee violated the First Amendment right to freedom of association. (b) Residents of Parker North, a neighborhood of about 300 homes in an unincorporated part of Douglas County, Colorado, opposed the annexation of their neighborhood into the Town of Parks. The residents raised less than $1,000 in monetary and in-kind contributions for their cause when supporters of annexation challenged the failure of the residents to register as an issue committee. (c) Colorado law required that any group of two or more persons that accepted or made contributions or expenditures exceeding $200 to support or oppose a ballot issue must register as an issue committee and report the names and addresses of anyone who contributes $20 or more. (d) The Colorado Constitution defined "issue committee" as: any person, other than a natural person, or any group of two or more persons, including natural persons: (I) [t]hat has a major purpose of supporting or opposing any ballot issue or ballot question; [and] (II) [t]hat has accepted or made contributions or expenditures in excess of two hundred dollars to support or oppose any ballot issue or ballot question. [Colo. Const. art. XXVIII, §2(10)(a)(I)-(II).] (e) Colorado law imposed the following obligations on issue committees. All monetary contributions had to be deposited	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	in a separate account in the committee's name; no contribution or expenditure exceeding $100 may be in cash. Colo. Const. art. XXVIII, §3(9), (10). The Colorado Fair Campaign Practices Act (the Campaign Act) required an issue committee to register with the appropriate officer (usually the Secretary of State or County Clerk) before accepting contributions. See Colo. Rev. Stat. §1-45-108(3). The statement of registration must include the name of the issue committee; the name of a registered agent; the committee's address and telephone number; the identities of all affiliated candidates and committees; and the "purpose or nature of interest" of the committee. Id. (f) The reports were public records and were made available on the Secretary of State's website. See Colo. Rev. Stat. §1-45-109(4)-(5). Failure to comply with the registration and reporting requirements could result in civil penalties "of fifty dollars per day for each day that a statement or other information required to be filed [by the Constitution or the Campaign Act] is not filed by the close of business on the day due," Colo. Const. art. XXVIII, §10(2)(a), although the Secretary or an administrative law judge (ALJ) can set aside or reduce a penalty upon a showing of good cause. See id. § 10(2)(b), (c). (g) Private citizens could enforce these provisions by filing with the Secretary of State a written complaint alleging a violation of the registration or reporting requirements. See	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	Colo. Const. art. XXVIII, §9(2)(a). Within three days of filing, the Secretary must refer the complaint to an ALJ who "shall hold a hearing within fifteen days of the referral of the complaint, and shall render a decision within fifteen days of the hearing." Id. If the ALJ determines that a violation occurred, the judge's decision "shall include any appropriate order, sanction, or relief authorized" under Article XXVIII of the state constitution. Id. Further, a party in such a proceeding may be entitled to recover its attorneys' fees from an opposing attorney or party who brought or defended an action without "substantial justification." Colo. Rev. Stat. §1-45-111.5(2). The ALJ's decision "shall be final and subject to review by the [Colorado] court of appeals." Colo. Const. art. XXVIII, §9(2)(a). The Secretary can enforce the decision; but if the Secretary does not file an enforcement action within 30 days of the decision, the private complainant may institute a private action for enforcement. See id. "The prevailing party in a private enforcement action shall be entitled to reasonable attorneys' fees and costs." Id. (h) The test for the constitutionality of disclosure requirements in the electoral context was that there had to be a substantial relation between the disclosure requirement and a sufficiently important government interest. There were three potential government interests for the disclosure requirements. The first justification, facilitating the detection of violations of contribution limitations, did not	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	apply because contribution limitations in the ballot issue context are constitutionally impermissible. The second justification, deterring corruption and its appearance, did not apply because quid-pro-quo corruption does not arise in a ballot issue campaign. (i) The third justification was the public interest in knowing who is spending and receiving money to support or oppose a ballot issue. The court held that the burden on the residents' right to association imposed by Colorado's registration and reporting requirements cannot be justified by the public interest in disclosure. The residents' expenditures were "sufficiently small that they say little about the contributors' views of their financial interest in the annexation issue. One can question the value to the electorate of knowing that the contributors to Plaintiffs' committee might think that they will financially benefit from defeat of the annexation by more than the amount of their contributions." 625 F.3d at 1261. The court also held that "the financial burden of state regulation on Plaintiffs' freedom of association approaches or exceeds the value of their financial contributions to their political effort; and the governmental interest in imposing those regulations is minimal, if nonexistent, in light of the small size of the contributions." Id. Moreover, the purpose of the provisions of the Colorado Constitution governing campaign finances was to prevent large contributions from wealthy contributors from exercising a disproportionate level of influence over the political process. This purpose	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	was not at issue with the residents' committee. Accordingly, there was no substantial relation between the disclosure requirements and a governmental interest that was sufficiently important to justify the burden on the freedom of association. See also Coalition For Secular Government v. Williams, 815 F.3d 1267, 1278, 1279-80 (10th Cir. 2016) (court applied exacting scrutiny to hold that application of Colorado's registration and disclosure requirements to an issue committee that raised and spent $3,500 to influence a statewide ballot initiative violated the First Amendment;"[T]he strength of the public's interest in issue-committee disclosure depends, in part, on how much money the issue committee has raised or spent;" "The minimal informational interest here cannot support Colorado's filing schedule that requires twelve disclosures in seven months regardless of whether an issue committee has received or spent any money. Further, the burden of asking for personal information [name and address] of $20-contributors is substantial. Gaining the necessary information from these contributors might well result in fewer contributors willing to support an issue committee's advocacy. A $20 threshold for contributor disclosure – coupled with other registration and reporting requirements – is too burdensome when applied to a small-scale issue committee like the Coalition"), cert. denied, 137 S. Ct. 173 (2016).	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	Center for Civic Action v. City of Albuquerque Board of Ethics and Campaign Practices, 2025 WL 3485749 (D.N.M. Dec. 4, 2025) (City of Albuquerque Charter required Section 501(c)(4) social welfare organizations that were not political committees whose major purpose was influencing candidate or ballot measure elections to establish one campaign checking account per election, to submit bank statements on a monthly basis reflecting the prior month's activity, to file regular statements of contributions and for non-individual contributors to provide the identities of their owners or managers, to allocate contributions and expenditures to specific candidates or measures and any overlapping expenses to be apportioned pro-rata, and to file images of all broadly distributed campaign material on or before the day that the financial report disclosing the expenditure for the campaign material was due; disclosure of contributions was required regardless of the purpose behind the contribution or dollar amount; court applied exacting scrutiny and held that the regulations as applied were not narrowly tailored and unduly burdensome). 33. (a) In Iowa Right to Life Committee, Inc. v. Tooker, 717 F.3d 576 (8th Cir. 2013), petition for rehearing and petition for rehearing en banc denied, 2013 U.S. App. LEXIS 14824 (8th Cir. 2013), cert. denied, 572 U.S. 1046 (2014), the court, relying on its earlier opinion in Minnesota Citizens Concerned for Life, Inc. v. Swanson, 692 F.3d 864 (8th Cir.	

ACTIVITY	FEDERAL ELECTION CAMPAIGN ACT OF 1971, AS AMENDED ("FECA")	INTERNAL REVENUE CODE OF 1986, AS AMENDED ("I.R.C.")
STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	2012) (en banc) (discussed in Paragraph 14 above), considered an as-applied challenge to the disclosure requirements for groups whose major purpose is not nominating or electing candidates. The court reviewed the challenge under exacting scrutiny. (b) Under Iowa statute and its administrative code, an independent expenditure committee must file with the Iowa Ethics and Campaign Disclosure Board an "independent expenditure statement" and an "initial report" within forty-eight hours of making an independent expenditure over $750, or within forty-eight hours of "disseminating the communication to its intended audience, whichever is earlier." Iowa Code §§68A.404(3), 68A.404(4)(a); Iowa Admin. Code rs. 351-4.9(15), 351-4.27(4). (c) A person who makes an independent expenditure uses Form Ind-Exp-O, a one page document, to electronically file both the independent expenditure statement and the initial report. See Iowa Admin. Code rs. 351-4.9(15), 351-4.27(2). The registration portion of the form requires the name and contact information of the organization and an individual within the organization. The rest of the form requires contact information for the funding source of the independent expenditure (and for any beneficiary of the expenditure), and information about the expenditure itself,	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	including the date and amount, how the message is communicated, and the position advocated. (d) The court held that the registration portion of Form Ind-Exp-O was constitutional as applied to groups whose major purpose is not nominating or electing candidates. Requiring the name and address of the person making the independent expenditure provides transparency that enables the electorate to make informed decisions and give proper weight to different speakers and messages. In addition, the basic information that Form Ind-Exp-O requires is not overly burdensome. Only when a person makes an independent expenditure is the requirement triggered. (e) The court also held that the information in the "initial report" section of Form Ind-Exp-O was not overly burdensome. This information – the name and address of the funding source for, and beneficiary of, the independent expenditure, and brief details of the expenditure itself – was similar to a one-time, event-driven report. Requiring reporting whenever money is spent is a constitutional way to accomplish disclosure-related interests. (f) The court also upheld the constitutionality of forty-eight hour reporting. Requiring prompt disclosure within forty-eight hours bore a substantial relationship to Iowa's sufficiently important interest in keeping the public informed. The forty-eight hour deadline made disclosure	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	more effective because it was rapid and informative, and more quickly provided the electorate with information about the sources of election-related spending. With modern technology, the burden of completing the short, electronic form within two days of making a $750 expenditure was not onerous. See also Students for Life Action v. Jackley, 746 F. Supp. 3d 668 (D.S.D. 2024) (in granting the state's motion to dismiss, court upheld South Dakota statute that required on-ad disclaimers and disclosure statements for expenditures for independent communications that referred to a candidate or ballot question; the on-ad disclaimer provision required that ads costing over $100 identify who is making the independent communication expenditure for that communication, include a mailing and website address for the person or entity making the expenditure, and list the entity's top five contributors from the prior twelve months; disclosure statement provision required those making the expenditures file an independent communication expenditure statement with the South Dakota Secretary of State within forty-eight hours of the time the communication is disseminated, broadcast, or otherwise published). (g) The court then found unconstitutional the requirement of after filing the initial report, an independent expenditure committee had to file subsequent reports according to the same schedule as the office or election to which the	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	independent expenditure was directed, for up to four times during an election year. Iowa Code §68A.404(3)(a). The committee had to continue to file reports until it filed a notice of dissolution. Iowa Admin. Code r. 351-4.9(15). (h) The subsequent reports required disclosure of: (i) the amount of cash on hand at the beginning of the reporting period; (ii) the name and mailing address of each person who made contributions of money or in-kind contributions above $25 in many instances; (iii) the total amount of contributions made to the committee during the reporting period; (iv) loans made; (v) the name and mailing address of each person to whom disbursements or loan repayments have been made using contributions received, and the amount, purpose, and date of each disbursement; (vi) disbursements made to or by a consultant, disclosing the name and address of the recipient, amount, purpose, and date; (vii) the amount and nature of debts and obligations owed in excess of specified amounts; and (viii) other pertinent information. Iowa Code §68A.402A(1). (i) The court held that by conditioning the right to speak on cumbersome ongoing regulatory burdens, regardless of the committee's major purpose, Iowa's disclosure law discouraged non-PACs, particularly small ones with limited resources, from engaging in protected political speech. Requiring a group to file perpetual, ongoing reports regardless of its purpose, and regardless of whether it ever	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	made more than a single independent expenditure, was no more than tenuously related to Iowa's informational interest. Furthermore, having independent expenditure committees file a one-time report whenever money was spent – similar to the initial report – would be less problematic and allow Iowa to achieve its interest in helping the public make informed choices in the political marketplace. (j) The court also struck down the requirement that an independent expenditure committee file a supplemental report if, after October 19, but before the election in an election year, it either raised or expended more than $1,000. Iowa Code §§68A.402(2)(a)-(b), 68A.404(3)(a)(1). (k) Under the first supplemental reporting requirement, after a group made a single independent expenditure, it had to continually disclose funds it raised over $1,000 – regardless of whether the group ever used the funds to make an independent expenditure. Non-PACs already had to report expenditures over $750, and the sources of those funds, in the independent expenditure statement – tied to an actual expenditure – making both supplemental reporting requirements redundant. Iowa Code §68A.404(3). Since the obligations continue until the independent expenditure committee was dissolved, to escape the ongoing burdens, the committee had to file a termination statement. Iowa's supplemental reporting requirements thus extended the ongoing reporting requirements, untethered from continued	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	speech, that hinder groups from participating in the political debate and limit their access to the citizenry and government. Cf. Vermont Right to Life Committee, Inc. v. Sorrell, 758 F.3d 118, 137-38 (2d Cir. 2014) (court upheld Vermont's statutory disclosure requirements for PACs that applied only to political committees that received contributions and made expenditures of $1,000 or more in a two-year general election cycle; PAC could file a final report that lists all of its contributions and expenditures and terminates its campaign activities), cert. denied, 574 U.S. 1074 (2015). (l) More troubling, each supplemental report required compliance with the onerous filing requirements of Iowa Code §68A.402A. Iowa Code §68A.404(3)(a). Iowa did not show how requiring additional, redundant, and more burdensome reports fulfilled a sufficiently important informational interest not already advanced by the independent expenditure statement. (m) The court also struck down the requirement that when an independent expenditure committee determines that it will no longer make an independent expenditure, it must notify the board within thirty days after such determination by filing a termination report. Iowa Code §68A.402B(3).	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	(n) The court found that the termination requirement was part of the ongoing reporting requirements, and therefore for a committee to speak again, it had to initiate the bureaucratic process again. The termination requirement interfered with the constitutionally protected marketplace of ideas, because it forced a group to decide whether it will give up its right to speak. To speak again, it had to decide whether renewing the ongoing reporting cycle was worth the effort. Furthermore, the termination requirement did not support an informational interest since the termination report did not provide disclosure of actual contributions and expenditures. (o) Finally, the court addressed an equal protection challenge under the Fourteenth Amendment to the requirement that an independent expenditure statement filed with the Iowa Ethics and Campaign Disclosure Board contain a certification by an officer of a corporation that the corporation's board of directors authorized the independent expenditure within the calendar year in which the expenditure was incurred. Iowa Code §68A.404(5)(g). (p) Since Iowa failed to show any interest in singling out corporations, the court struck down the certification requirement. 34. (a) In Wisconsin Right to Life, Inc. v. Barland, 751 F.3d 804 (7th Cir. 2014), the court distinguished Madigan (discussed in Paragraph 19 above), and applied exacting scrutiny to	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	strike down Wisconsin's registration, reporting, and disclosure requirements for issue advocacy organizations that do not have express advocacy and its functional equivalent as their major purpose. (b) Under the regulation of the Government Accountability Board, GAB §1.28, independent political speakers were subject to the state's PAC regulatory system when they made "a communication for a political purpose." (c) The regulation defined "communication" as "any printed advertisement, billboard, handbill, sample ballot, television or radio advertisement, telephone call, e-mail, internet posting, and any other form of communication that may be utilized for a political purpose." GAB §1.28(1)(b). (d) The regulation defined political purpose as follows: (3) A communication is for a "political purpose" if either of the following applies: (a) The communication contains terms such as the following or their functional equivalents with reference to a clearly identified candidate and unambiguously relates to the campaign of the candidate: 1. "Vote for;" 2. "Elect;" 3. "Support;" 4. "Cast your ballot for;" 5. "Smith for Assembly;" 6. "Vote against;" 7. "Defeat;" or 8. "Reject."	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	(b) The communication is susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate. A communication is susceptible of no other reasonable interpretation if it is made during the period beginning on the 60th day preceding a general, special, or spring election ending on the date of that election or during the period beginning on the 30th day preceding a primary election and ending on the date of that election and that includes a reference to or depiction of a clearly identified candidate and: 1. Refers to the personal qualities, character, or fitness of that candidate; 2. Supports or condemns that candidate's position or stance on issues; or 3. Supports or condemns that candidate's public record. [GAB 1.28(b)] (e) The court held that the definition of political purpose under the second sentence of subsection (3)(b) was unconstitutional. The court found that the distinction between express advocacy and issue discussion in the disclosure context continued to be important after Citizens United: This aspect of Citizens United must be understood in proper context. The Court's language relaxing the express-advocacy limitation applies only to the specifics of the disclosure requirement at issue there. The Court was addressing the one-time, event-driven disclosure rule for federal electioneering communications, see 2 U.S.C. §434(f) [now 52 U.S.C. §30104(f)], a far more modest disclosure	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	requirement than the comprehensive, continuous reporting regime imposed on federal PACs, see id. §434(a)-(b) [now §30104(a)-(b)], or even the less burdensome disclosure rule for independent expenditures, see id. §434(c) [now §30104(c)]. When the Court said that "disclosure is a less restrictive alternative to more comprehensive regulations of speech," Citizens United, 558 U.S. at 369, it was talking about the disclosure requirement for electioneering communications. In that specific context, the Court declined to apply the express-advocacy limiting principle. But nothing in Citizens United suggests that the Court was tossing out the express-advocacy limitation for all disclosure systems, no matter how burdensome. To the contrary, the Court spent several pages explaining that a corporation's option to form an affiliated PAC is too burdensome to justify banning the corporation itself from speaking. Id. at 337-39. . . . . So it's a mistake to read Citizens United as giving the government a green light to impose political-committee status on every person or group that makes a communication about a political issue that also refers to a candidate. That's what GAB §1.28(3)(b) does. During the 30/60-day preelection periods, all political speech about issues counts as express advocacy – thus triggering full political-committee status and other restrictions – if the speaker	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	names and says pretty much anything at all about a candidate for state or local office. [751 F.3d at 836-37] (f) The court also distinguished Madigan: The Board also relies on a passage in Madigan approving language in the Illinois campaign-finance code that keys that state's regulation of ballot-initiative activity to the making of contributions or expenditures for the purpose of "advocating the defeat or passage of" an initiative. 697 F.3d at 485. This is the language of express advocacy and does not implicate Buckley vagueness and overbreadth concerns. This part of Madigan does not help the Board here. [751 F.3d at 838] (g) The court then struck down GAB §1.91, which imposed the registration and reporting requirements of PACs on organizations that accept contributions for, incur obligations for, or make an independent disbursement exceeding $300 in aggregate during a calendar year regardless of whether express advocacy was the organization's major purpose: For groups that engage in express election advocacy as their major purpose, the PAC regulatory system – with its organizational prerequisites, registration duties, and comprehensive, continuous financial reporting – is a relevantly correlated and reasonably tailored means of achieving the public's informational interest. But the same	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	cannot be said for imposing the same pervasive regulatory regime on issue-advocacy groups that only occasionally engage in express advocacy. A simpler, less burdensome disclosure rule for occasional express-advocacy spending by "nonmajor-purpose groups" would be constitutionally permissible under Citizens United, which approved BCRA's one-time, event-driven disclosure requirement for federal electioneering communications – again, broadcast ads in excess of $10,000 aired close to an election. 588 U.S. at 366-69. That's a far cry from imposing full PAC-like burdens on all issue-advocacy groups once a modest annual spending threshold is crossed. In effect GAB §1.91 requires every issue-advocacy group to form a PAC before spending as little as $300.01 on express advocacy, whether at election time or any other time of year. Failure to do so brings civil and criminal penalties. [751 F.3d at 841] Cf. Yamada v. Snipes, 786 F.3d 1182, 1199 (9th Cir. 2015) ("Hawaii's definition is distinguishable from the Wisconsin regulation struck down in *Barland, 751 F.3d at 822, 834-37,* which treated an organization as a political committee if it, inter alia, spent more than $300 to communicate 'almost anything . . . about a candidate within 30 days of a primary and 60 days of a general election.' Hawaii's more tailored disclosure regime only extends to organizations with the purpose of engaging in express advocacy or its functional	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	equivalent. *See Sorrell, 758 F.3d at 137-38* (distinguishing *Barland* and upholding Vermont's political committee regime, which applied only to groups that accepted contributions and made expenditures over $1,000 'for the purpose of supporting or opposing one or more candidates.'"), cert. denied sub nom. Yamada v. Shoda, 577 U.S. 1007 (2015). 35. (a) In Citizens Union v. Attorney General, 408 F. Supp. 3d 478 (S.D.N.Y. 2019), the court applied exacting scrutiny and struck down as facially invalid the New York statutory requirements for Section 501(c)(3) and 501(c)(4) organizations to publicly report their donors as violating the organizations' First Amendment rights of freedom of speech and association. (b) Section 172-e of the New York Executive Law required a Section 501(c)(3) organization to disclose all donors who contributed over $2,500 to the organization if the organization itself makes an in-kind donation to a Section 501(c)(4) organization that engages in lobbying in New York, either on its own behalf or through a retained lobbyist. (c) Section 172-f of the New York Executive Law required a Section 501(c)(4) organization to disclose all donors who contributed $1,000 or more to the organization if the organization expends more than $10,000 in a calendar year on communications made to at least 500 members of the	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	public, unless the donors made contributions only to a segregated account not used to support these communications. The statute applied to public statements that refer to and advocate for or against a clearly identified official or the position of any elected official or administrative or legislative body relating to the outcome of any vote or substance of any legislation, potential legislation, pending legislation, rule, regulation, hearing, or decision by any legislative, executive, or administrative body. (d) The statute also required that a funding disclosure report filed under Section 172-e be made available on the New York Joint Commission on Public Entities website, and that a financial disclosure report filed under Section 172-f be made available on the New York Department of Law website. (e) The New York Attorney General may determine that disclosure should not occur if it may cause harm, threats, harassment, or reprisals to the source of the donation or to individuals or property affiliated with the source of the donation. An entity denied an exemption may appeal the Attorney General's determination. (f) The court held that Section 172-e places an unconstitutional burden on the First Amendment interest in freedom of association. Effective advocacy of both public	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	and private points of view, particularly controversial ones, is enhanced by group association. NAACP v. Alabama ex rel. Patterson, 357 U.S. at 460. The right to join together for the advancement of beliefs and ideas is diluted if it does not include the right to pool money through contributions, for funds are often essential if advocacy is to be truly or optimally effective. Buckley v. Valeo, 424 U.S. at 65-66. Donors who desire anonymity may be motivated by fear of economic or official retaliation, by concern about social ostracism, or merely by a desire to preserve as much of one's privacy as possible. McIntyre v. Ohio Elections Commission, 514 U.S. at 341-42. As a result of such fears, compelled disclosure can place a substantial restraint on the exercise of the right to freedom of association. NAACP v. Alabama ex rel. Patterson, 357 U.S. at 462. (g) The court held that there is no substantial relation between the requirement of donors to Section 501(c)(3) organizations to be publicly disclosed and any important government interest. The link between a Section 501(c)(3) organization's donors and the content of lobbying communications by the Section 501(c)(4) organization is too attenuated to effectively advance any informational interest. (h) The court also held that the availability of an exemption from disclosure did not cure the statute's constitutional deficiencies. First, it does nothing to remedy the poor fit between the statute and the identified government purpose	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	of providing more information about the funding of lobbying. Second, an after-the-fact exemption procedure does nothing to ameliorate the chilling effect on Section 501(c)(3) organization donors. The possibility that the Attorney General might in the future approve a disclosure exemption would provide cold comfort to a potential donor asked to run the risk of threats, harassment, or reprisals. (i) Finally, the court held that Section 172-f unconstitutionally intrudes on donors' First Amendment privacy rights and associational interests. It required disclosure whenever a Section 501(c)(4) organization engages in pure issue advocacy before the public, including communications that take a stance on a position espoused by any elected official, or that relate to potential legislation. Given that any matter of public importance could become the subject of legislation and given the range of positions taken by all elected officials, Section 172-f reaches a far broader swath of communications than prior case law allowed. See also First Choice Women's Resource Centers v. Davenport, 608 U.S. 174, 2026 WL 1153029, at *12 (U.S. April 29, 2026) (in a unanimous decision, Court held that a pro-life religious organization had Article III standing to challenge the constitutionality of a subpoena from the New Jersey Attorney General demanding information about its financial supporters; "Since the 1950s, this Court has	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	confronted one official demand after another like the Attorney General's. Over and again, we have held those demands burden the exercise of First Amendment rights. Disputing none of these precedents but seeking ways around them, the Attorney General has offered a variety of arguments. Some are old, some are new, but none succeeds"); McIntyre v. Ohio Elections Commission, 514 U.S. 334, 342-43 (1995) (concerned citizen financed, printed, and distributed flyers opposing a local school tax referendum; some of the flyers did not comply with an Ohio law requiring disclaimers identifying the sponsor of any materials designed to promote the nomination or election or defeat of a candidate, or to influence the voters in any election, or to make an expenditure to finance political communications; Court struck down the law as unconstitutional; an author's decision to remain anonymous, like other decisions regarding the contents of a publication, is protected by the First Amendment; in addition to protecting against the threat of persecution, an author may believe his or her ideas will be more persuasive if readers are unaware of the author's identity; anonymity provides a way for an author who may be personally unpopular to ensure that readers will not prejudge the author's message because they do not like its proponent, and protects the author's right to express his or her ideas without fear of retaliation; state could not justify disclaimer requirements as a means to prevent corruption since flyers dealt with issues	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	rather than candidates for public office; Court distinguished between an independent expenditure disclosure that identified the amount and use of money in support of a candidate and disclosure of a written election-related document that reflects a personally crafted statement of a political viewpoint). Buckley v. Valeo, 424 U.S. 1, 64-68 and 79-81 (1976) (per curiam) (compelled disclosure can seriously infringe on the privacy of association and belief guaranteed by the First Amendment; since funds are often essential if advocacy is to be effective, the right to join together for the advancement of beliefs and ideas is diluted if it does not include the right to pool money through contributions; the invasion of privacy of belief may be as great when the information sought concerns the giving and spending of money as when it concerns the joining of organizations, for financial transactions can reveal much about a person's activities, associations, and beliefs; disclosure will deter some individuals who otherwise might contribute, and may expose contributors to harassment or retaliation; Court limited disclosure requirements only to organizations that are under the control of a candidate or the major purpose of which is the nomination or election of a candidate, as well as spending that is unambiguously campaign-related); Shelton v. Tucker, 364 U.S. 479, 488 (1960) (Court struck down as facially unconstitutional a state requirement that public school teachers list all organizations to which they	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	belonged or contributed to in the past five years even though the list was not made public; state had to use a less drastic means when possible to achieve its objective); Talley v. California, 362 U.S. 60, 64-65 (1960) (Court facially struck down a Los Angeles ordinance that required handbills urging a civil rights boycott to contain a disclaimer disclosing the names of their printers and the persons who caused the handbills to be distributed, including the identities of owners, managers, or agents of organizational sponsors; the identification requirement would tend to restrict the freedom to distribute information and thereby freedom of expression; persecuted groups throughout history have been able to criticize oppressive practices and laws either anonymously or not at all; speaker identification requirements and fear of reprisal might deter peaceful discussion of public matters of importance). National Association for the Advancement of Colored People v. Alabama, 357 U.S. 449, 460-63 (1958) (Court declined to enforce Alabama's subpoena of NAACP's membership list; effective advocacy of public and private points of view, especially controversial ones, is enhanced by group association; compelled disclosure of affiliation with groups engaged in advocacy may be a restraint on freedom of association, and privacy in group association may be indispensable to preservation of freedom of association, particularly if a group advocates dissident beliefs; the constitutional protection of associational privacy does not	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	lessen when the reprisals come from private community pressures rather than government, for it is only after the initial exertion of state power in forcing disclosure that private action takes hold). Minnesota Right to Life v. Rashid, Case No. 25-CV-02476 (NEB/DTS), Order on Motion for Preliminary Injunction (D. Minn. Oct. 20, 2025) (Minnesota statute required lobbying principals (those who pay lobbyists or otherwise spend money to influence legislative action) spending more than $2,000 on advertising to disclose the names and addresses of their vendors in an itemized expenditure report; court applied exacting scrutiny under Bonta and granted a preliminary injunction against enforcement of the statute; assuming that the state has a strong interest in transparency surrounding influences on legislators' decision-making, the vendor-disclosure requirement is not substantially related to that interest for three reasons; first, vendors are not the true speaker behind the spending; second, the state has not cited any concrete evidence that vendor information actually provides meaningful insight into the lobbying principals, and the state's underdeveloped record does not contain a single, concrete instance where real-life vendor information advanced the interest of transparency; third, because lobbying principals need not report vendor information until the following year, the public would not have access to that	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	information until well after the advertisement runs and the legislative session ends). AJP Educational Foundation v. Miyares, 806 F. Supp. 3d 603 (E.D. Va. 2025) (As part of an investigation of possible violations of the Virginia Solicitation of Contribution law, Virginia Attorney General issued a Civil Investigative Demand ("CID") on the AJP Educational Foundation, Inc. d/b/a American Muslims for Palestine ("AMP") seeking all donor lists, including list-serve and email groups; the Foundation was a nonprofit organization dedicated to advancing the movement for justice in Palestine by educating the American public about Palestine and its rich cultural, historical, and religious heritage; court applied exacting scrutiny under Bonta and granted a preliminary injunction against enforcement of the CID for production of the donor lists; court found there was a dramatic mismatch between the state's interest in investigating wrongdoing by charitable organizations that solicit donations in the state and the sweeping disclosure demand for AMP's entire donor list; a narrowly tailored request for information to corroborate or disprove amounts reported in AMP's Form 990 could be limited to the dollar figures AMP received from its donors without seeking the identities of those donors; the desire to ascertain whether donors are victims of, or witnesses to, any misrepresentations does not sustain such an expansive demand, and the demand for the entire donor list creates an unnecessary risk of chilling because it	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	indiscriminately sweeps up the information of every donor on AMP's lists, including those wishing to remain anonymous; the AG did not take meaningful steps to ensure the donors' privacy, including designating the donor lists for "Attorneys Eyes Only" and redacting contact information; it is unclear how the AG could determine the number of times AMP improperly solicited funds based on how many donations AMP has received, given that many individuals who are solicited do not donate, and many donate without having been solicited). National Rifle Association v. City of Los Angeles, 441 F. Supp. 3d 918, 932, 938 (C.D. Cal. 2019) (court granted preliminary injunction against enforcement of ordinance that required a prospective contractor with the City of Los Angeles to disclose all contracts with or sponsorship of the National Rifle Association; for the First Amendment speech claims, court held that although the City has a strong interest in protecting its citizens, the ordinance had no relationship to achieving that interest; "Assuming stricter gun laws would increase the safety of the citizens of Los Angeles, the Ordinance shows an intent to restrict the NRA's ability to *advocate* against those laws. Because the Ordinance's clear purpose is to stifle the message of the NRA, it is a content-based regulation of speech and subject to strict scrutiny;" for the First Amendment freedom of association claims, court applied exacting scrutiny and held that because the City had no legitimate interest in the ordinance, it would likely fail	

ACTIVITY	FEDERAL ELECTION CAMPAIGN ACT OF 1971, AS AMENDED ("FECA")	INTERNAL REVENUE CODE OF 1986, AS AMENDED ("I.R.C.")
STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	exacting scrutiny; to succeed at trial plaintiffs would need to show that the ordinance places a burden on First Amendment rights either through harassment or chilled association, and that burden is not justified by a compelling government interest). Cf. Americans for Prosperity Foundation v. Bonta, 141 S. Ct. 2373, 2387 (2021) (Attorney General of California by regulation required charitable organizations renewing their registration to file copies of their Internal Revenue Service Form 990 as a condition of being legally able to solicit contributions in the state; Schedule B of this form required the organizations to disclose the names and addresses of donors who contributed more than $5,000 in a taxable year; court applied exacting scrutiny and struck down this requirement as facially invalid under the First Amendment as a violation of a charitable organization's freedom of association; the disclosure requirement created an unnecessary risk of a chilling effect on donors by indiscriminately sweeping up the information of every major donor with reason to remain anonymous; California was unable to ensure the confidentiality of donors' information, and donors and potential donors would be reasonably justified in a fear of disclosure; the plaintiff organizations introduced evidence that they and their supporters were subjected to bomb threats, protests, stalking, and physical violence; exacting scrutiny required that there be a substantial relation between the disclosure requirement and	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	a sufficiently important government interest, and that the disclosure requirement be narrowly tailored to the interest it promoted; "The upshot is that California casts a dragnet for sensitive donor information from tens of thousands of charities each year, even though that information will become relevant in only a small number of cases involving filed complaints. California does not rely on Schedule Bs to initiate investigations, and in all events, there are multiple alternative mechanisms through which the Attorney General can obtain Schedule B information after initiating an investigation"); Bates v. Little Rock, 361 U.S. 516, 525 (1960) (Court held unconstitutional a city tax ordinance that required nonprofit groups to publicly disclose donors; even an otherwise legitimate statute must bear a reasonable relationship to the governmental purpose asserted as its justification). But cf. Doe v. Reed, 561 U. S. 186, 219, 228 (2010) (Scalia, J., concurring in the judgment) (plaintiffs argued that disclosure of petition signatures under Washington state law may lead to threats and intimidation; "There are laws against threats and intimidation; and harsh criticism, short of unlawful action, is a price our people have traditionally been willing to pay for self-governance. Requiring people to stand up in public for their political acts fosters civic courage, without which democracy is doomed. For my part, I do not look forward to a society which, thanks to the Supreme Court, campaigns anonymously (McIntyre) and	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	even exercises the direct democracy of initiative and referendum hidden from public scrutiny and protected from the accountability of criticism. This does not resemble the Home of the Brave"); Rio Grande Foundation v. Oliver, 154 F.4th 1213 (10th Cir. 2025) (court applied exacting scrutiny, as interpreted by the Supreme Court in Americans for Prosperity Foundation v. Bonta, 141 S. Ct. 2373 (2021), to uphold New Mexico's statutory requirement for disclosure of donors who gave more than $5,000 to the general fund of an organization during an election cycle when the organization uses the fund to pay for independent expenditures of more than $9,000 in a statewide election or more than $3,000 in a nonstatewide election that refer to candidates or ballot initiatives within 30 days before a primary election or 60 days before a general election; donors of $5,000 or more to the general fund could opt-out of disclosure by specifying in writing that the contribution was not to be used to fund independent or coordinated expenditures or to make contributions to a candidate, campaign committee, or political committee); Gaspee Project v. Mederos, 13 F.4th 79 (1st Cir. 2021) (court applied exacting scrutiny, as interpreted by the Supreme Court in Americans for Prosperity Foundation v. Bonta, 141 S. Ct. 2373 (2021), to uphold the Rhode Island statutory disclaimer requirement for tax-exempt organizations under Section 501(c), and Section 501(c)(4) organizations that spent an aggregate annual amount of no more than ten	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	percent of its annual expenses, or no more than $15,000, whichever is less, on independent expenditures, electioneering communications, and certain monetary transfers; these organizations that made, incurred, or funded an electioneering communication had to include on the communication a list of their five largest donors in the one year before the date of the communication; with respect to printed communications, this obligation did not apply to news editorials, campaign paraphernalia (such as campaign buttons and bumper stickers), or signage measuring under thirty-two square feet; all of the statute's disclosure and disclaimer requirements applied only to independent expenditures in excess of $1,000 within a calendar year, and electioneering communications in excess of $1,000 in the sixty days before a general election and thirty days before a primary; furthermore, an electioneering communication had to be targeted to the relevant electorate so that it can only be received by two thousand or more persons in the district the candidate seeks to represent the constituency voting on the referendum; in addition, only money contributed to an organization for purposes of independent expenditures or electioneering communications had to be reported as such; should a donor prefer, donations could be expressly conditioned on not using the donation for independent expenditures or electioneering communications; the receiving organization then had to certify that the donation would not be used as such and that the donor would not be	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	required to appear in the list of donors), cert. denied, 142 S. Ct. 2647 (2022). Yes on Prop B, Committee in Support of the Earthquake Safety & Emergency Response Bond v. City & County of San Francisco, 440 F. Supp. 3d 1049 (N.D. Cal. 2020) (court applied exacting scrutiny to uphold secondary contributor disclosure requirements; the requirements can expose the actual contributors to an ad hoc organization with a misleading name and thereby provide useful information to voters concerning the interests supporting or opposing a ballot proposition; under Proposition F, all ads paid for by "primarily formed" independent expenditure and ballot measure committees must include a disclosure identifying the committee's top three donors of $5,000 or more; if one of those contributors is a committee, the ad must also disclose that committee's top two donors of $5,000 or more in the last five months; in all ads other than audio ads, the names of both primary and secondary contributors must be followed by the amount of money they contributed; a primarily formed committee is one created to support or oppose a single candidate or measure appearing on the ballot; Citizens Union was distinguishable since it involved a Section 501(c)(3) organization that could not engage in substantial lobbying; it made little sense to tie donors to lobbying activities because they made a donation to an organization that could not, by law, engage in substantial	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	lobbying activity), appeal dismissed as moot, 826 Fed. App'x 648 (Mem) (9th Cir. 2020). Compare Erin Chlopak, "One of These Things Is Not Like the Other: NAACP v. Alabama Is Not a Manual for Powerful, Wealthy Spenders to Pour Unlimited Secret :Money Into Our Political Process," 69 American University Law Review 1395, 1412 ("[Doe v. Reed], and the Supreme Court's campaign finance disclosure decisions that preceded it, make clear that an entity is not entitled to the NAACP exemption in the context of electoral transparency laws merely because of general claims of threats or harassment. These cases reflect the Court's recognition of the crucial role electoral transparency laws play in our democracy and the high bar that a party must meet when it is seeking to deprive voters of important information that may affect their electoral choices.") (May 2020) with Bradley A. Smith, "The Threat to Privacy of Opinion," The Wall Street Journal, at A17 (June 29, 2018) ("Federal law, and the laws of every state, already require disclosure of the names, addresses, and, in most cases, employer information of all but the most de minimis donors to campaigns, political parties, and political action committees. But today legislators in at least 24 states have proposed expanding compulsory disclosure to include financial support for think tanks and other nonprofit groups. In other words, organizations like the NAACP. Unfortunately, many lower courts have treated NAACP v. Alabama as a dead letter,	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	inapplicable to other cases. The Supreme Court has so far failed to give its handiwork a robust defense. As a consequence, a legal framework is now growing that enables harassment and intimidation of those who support disfavored causes. But civil-rights advocates fought for decades to establish Americans' right to associate and seek change without first having to register and report their activities. The anniversary of NAACP v. Alabama is a good occasion to remember that disclosure isn't always benign, and that once the right to privacy of opinion is gone, it may take decades to get back."). See also Claudia Cummings, "Supreme Court Checks Dangerous Abuse of Donor Disclosure," The Washington Times (May 25, 2026) ("The Supreme Court [in First Choice Women's Resource Centers v. Davenport] rightly refused to accept New Jersey's argument that First Choice had to wait for 'tangible harm' before seeking relief. The justices recognized that forcing disclosure of private donor information is itself an injury to the First Amendment rights of both organizations and their supporters. Importantly, the Court affirmed that constitutional rights are not protected if citizens must first surrender them in order to defend them. This principle is deeply rooted in American law. The Court cited NAACP v. Alabama, in which compelled disclosure of donor lists was deemed a direct form of suppression. That landmark ruling acknowledged what remains true today: Privacy is often a prerequisite for free expression.")	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	(available at https://www.washingtontimes.com/news/2026/may/25/supreme-court-checks-dangerous-abuse-donor-disclosure/). 36. (a) In Americans for Prosperity v. Grewal, 2019 WL 4855853 (D.N.J. Oct. 2, 2019) (unpublished opinion), the court applied exacting scrutiny and issued a preliminary injunction against enforcement of the reporting and disclosure requirements imposed on independent expenditure committees. (b) Under N.J.S.A. §19:44A-3, an independent expenditure committee is any person or entity organized under Section 527 or 501(c)(4) of the Internal Revenue Code, and that is not otherwise subject to N.J.S.A. §19:44A-3, and engages in influencing or attempting to influence the outcome of any election or the nomination, election, or defeat of any person to any State or local elective public office, or the passage or defeat of any public question, or in providing political information on any candidate or public question, and raises or expends $3,000 or more in the aggregate for any such purpose annually, but does not coordinate its activities with any candidate or political party. (c) Under N.J.S.A. §19:44A-8(d)(1)-(2), an independent expenditure committee must file quarterly with the Election Law Enforcement Commission ("ELEC") a list of all	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	contributions of more than $10,000, and all expenditures of more than $3,000 spent on "influencing or attempting to influence the outcome" of any election, public question, legislation or regulation, or "provide any political information" on any candidate, public question, legislation or regulation. The nonexhaustive list of expenditures that count toward the $3,000 include "electioneering communications, voter registration, get-out-the vote efforts, polling, and research." (d) Under N.J.S.A. §19:44A-3(u), an electioneering communication means: any communication made within the period beginning on January 1 of an election year and the date of the election and refers to: (1) a clearly identified candidate for office and promotes or supports a candidate for that office or opposes a candidate for that office, regardless of whether the communication expressly advocates a vote for or against a candidate; or (2) a public question and promotes or supports the passage or defeat of that question, regardless of whether the communication expressly advocates a vote for or against the passage of the question. The term includes communications published in any newspaper or periodical; broadcast on radio, television, or the Internet or digital media, or any public address system; placed on any billboard, outdoor facility, button, motor vehicle, window display, poster, card, pamphlet, flyer, or other circular; or	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	contained in any direct mailing, robotic phone calls, or mass e-mails. (e) Under N.J.S.A. §19:44A-3(h), "providing political information" means communications that reflect "the opinion of the members of the organization on any candidate or candidates for public office, or any public question, or which contains facts on any such candidate, or public question whether or not such facts are within the personal knowledge of members of the organization." Political information means "any statement including, but not limited to, press releases, pamphlets, newsletters, advertisements, flyers, form letters, Internet or digital advertisements, or radio or television programs or advertisements." (f) The court held that under this statutory scheme, the same disclosure requirements applied whether an independent expenditure committee engages in electioneering communications identifying a clearly identified candidate, engages in influencing or attempting to influence any election, or engages in providing political information, which includes any fact or opinion. (g) The court held that the plaintiff Americans for Prosperity's NJ Taxpayer Scorecard would trigger the statute's disclosure obligations. The Scorecard focused on the issues and conveyed facts and opinions as it presented legislators' voting records on key issues ranging from	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	criminal justice reform to occupational licensing. The Scorecard triggered the disclosure obligations because it: (i) influenced or attempted to influence the chances of every candidate mentioned; and (ii) conveyed political information, such as a neutral, nonpartisan statement identifying the candidates, or listing a clearly defined candidate running in a particular election with that candidate's position on various issues, even if descriptions of those positions were absolutely neutral. (h) The court found a violation of exacting scrutiny because practically any media spending triggered the disclosure and reporting regime regardless of whether New Jersey voters were reached by the media listed in the statute. The court looked to an ELEC White Paper showing that mass-media spending by candidates and independent groups in the state's 2015 elections totaled $12.5 million, or 37% of total spending. One table showed that the category independent groups spent 66% of their portion of that $12.5 million on television, 13% on mail, 9% on mixed media, while spending negligible amounts or nothing on radio (2%), media-production (1%), cable television ($0), billboards ($0), printing ($0), newspapers ($0), robocalls ($0), and Internet (2%). That negligible spending on cable television, billboards, printing, robocalls, and the Internet means these are not media widely used by independent groups to communicate to New Jersey voters. Yet they are all included in the statute's definition of electioneering	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	communications under N.J.S.A. §19:44A-3(u), and many are included in the statute's definition of political information under N.J.S.A. §19:44A-3(h). (i) The court also found a violation of exacting scrutiny by the statute's application to any electioneering communications or spending from January 1 through Election Day. Every year in New Jersey is an election year. In other words, qualifying communications occurring on 1235 of the 1461 days from January 1, 2019 through December 31, 2022, or 84.53% of the time, would trigger the statute's disclosure obligations. Most other disclosure statutes applied to electioneering communications made within thirty or sixty days of an election. In addition, qualifying communications to influence a vote on a bill before the Assembly from January 1 of any year to Election Day in November would trigger the disclosure obligations, while the same otherwise qualifying communications seeking to influence the same bill but occurring from the day after Election Day to December 31 would not. The statutory scheme lacked a substantial relation between the disclosure requirement and the sufficiently important government interest in an informed electorate. This interest was the same for communications from January 1 through Election Day and for communications from the day after Election Day to December 31.	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	(j) Finally, the court found constitutionally problematic the statute's expansion of disclosure obligations to communications of purely factual political information that were historically limited to electioneering communications. Whether the Taxpayer Scorecard is an attempt to influence the election of a particular candidate or represents only the communication of political information is a distinction without a difference for triggering the disclosure obligations. If Americans for Prosperity raised or expended more than $3,000 on compiling or distributing the Scorecard during roughly 85% of the year, the disclosure obligation would be the same whether AFP was attempting to advocate for or against a clearly identified candidate, to influence an election, legislation, or regulation, or only to educate voters about the issues it monitors or advocates by providing facts or opinions. (k) On March 11, 2020, the court entered a consent order converting the preliminary injunction into a final judgment permanently enjoining enforcement of P.L. 2019, c. 124 insofar as it imposes any legal requirement on any independent expenditure committee. American Civil Liberties Union of New Jersey v. Grewal, Case 3:19-cv-17807-BRM-LHG, Document 29, PageID 164-167 (March 11, 2020). 37. (a) In Montana Citizens for Right to Work v. Mangan, 580 F. Supp. 3d 911 (D. Mont. 2022), the court applied strict	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	scrutiny and held that a Montana statute on its face violated the First Amendment and Equal Protection clauses. The statute required a candidate or political committee to contemporaneously provide another candidate with a copy of any campaign advertisement that referred to, but did not endorse, that candidate. (b) The statute provided: (1) A candidate or a political committee shall at the time specified in subsection (3) provide to candidates listed in subsection (2) any final copy of campaign advertising in print media, in printed material, or by broadcast media that is intended for public distribution in the ten days prior to an election day unless: (a) identical material was already published or broadcast; or (b) The material does not identify or mention the opposing candidate. (2) The material must be provided to all other candidates who have filed for the same office and who are individually identified or mentioned in the advertising, except candidates mentioned in the context of endorsements.	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	(3) Final copies of material described in subsection (1) must be provided to the candidates listed in subsection (2) at the following times: (a) at the time the material is published or broadcast or disseminated to the public; (b) if the material is disseminated by direct mail, on the date of the postmark; or (c) if the material is prepared and disseminated by hand, on the day the material is first being made available to the general public. (4) The copy of the material that must be provided to the candidates listed in subsection (2) must be provided by electronic mail, facsimile transmission, or hand delivery, with a copy provided by direct mail if the recipient does not have available either electronic mail or facsimile transmission. If the material is for broadcast media, the copy provided must be a written transcript of the broadcast. (c) Montana Citizens, a registered incidental political committee, six days before the November 2020 election sent approximately 16,000 mailers to Montana voters in twenty legislative districts. The mailers had three components:	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	(1) 2020 candidate surveys with information on where local candidates stood on issues related to organized labor and union dues ("2020 Candidate Survey"); (2) letters elaborating on the candidate survey results and urging voters to express their views on right to work issues to the candidates ("Dear Friend" letter); and (3) surveys to be returned that state whether the voter contacted the local candidates about right to work issues ("Survey Reply Memo"). (d) The mailer would not qualify as a direct endorsement of any candidate, and none directly called for the election of any candidates or the defeat of other candidates. (e) The court held that the appropriate standard of review for the First Amendment challenge was strict scrutiny. Since the statute targeted negative campaign advertising, it was a content-based restriction that was not viewpoint neutral. Accordingly, strict scrutiny applied. (f) Government regulation of speech was content-based if a law applied to particular speech because of the topic discussed or the idea or message expressed. A law may also be content-based if it required authorities to examine the contents of a message to see if a violation occurred. Here, the statute required the speaker to provide a copy of the	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	particular campaign advertisement to any candidates individually mentioned in the advertisement except candidates mentioned in the context of endorsements. Endorsements were treated differently from non-endorsements because the state as a matter of policy did not believe candidates needed to respond to endorsements. The state therefore drew a distinction based on the message a speaker conveys. A statute was presumptively unconstitutional if it applied to particular speech because of the topic discussed or the idea or message expressed. Reed v. Town of Gilbert, 576 U.S. 155, 165 (2015). (g) Under strict scrutiny, Montana had to show that the statute is narrowly tailored to achieve a compelling state interest. A statute is narrowly tailored if it targets and eliminates no more than the exact source of the evil it seeks to remedy. If a less restrictive alternative would serve the state's compelling interest with the same level of effectiveness, the state must use that alternative. (h) The court held that Montana failed to adequately connect the statute with the interests of combatting corruption and providing the electorate with information. First, Montana presented no evidence showing that the disclosure of negative campaign advertisements to individual candidates combats corruption. Unlike other disclosure cases regarding political contributions and expenditures, the statute did not regulate any financial aspect of a political action	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	committee's participation in the political process. Rather, it imposed a more pernicious burden on speech in that it delayed, and sometimes even prevented, political speech on the basis of content. (i) Second, Montana failed to connect the statute to an informed electorate. Unlike many disclosure laws, the statute did not require disclosure about a particular candidate or entity to the general public. The disclosure at issue was between a candidate or entity and an individual candidate. As a result, the informational interest espoused in other disclosure cases was inapposite. (j) As to Montana's purported interest in giving candidates a right to respond to negative campaign advertisements on the eve of an election, Montana did not show that last-minute campaign advertisements were more or less likely to contain false information than any other advertisement. Thus, a compelling interest in correcting false information, to the extent one existed, was not at issue. (k) In addition, the statute was not narrowly tailored because it was both overbroad and underinclusive. As to overbreadth, while the state's arguments focused on the right to respond to negative advertising, the statute also required disclosure in the context of neutral advertisements. For example, if a political action committee issued a mailer than only outlined the voting records of two candidates on	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	an issue with no further commentary, that mailer would be subject to disclosure. As such, the law was overbroad. (l) Underinclusivity creates a First Amendment concern when the state regulates one aspect of a problem while declining to regulate a different aspect of the problem that affects its stated interest in a comparable way. The disclosure rules applied only in the last ten days of an election. Montana failed to provide any evidence supporting its position that the ten-day timeframe may have unique impacts. That omission was particularly problematic as absentee ballots were mailed to voters twenty-five days before an election. (m) The statute also failed to cover certain types of communications. Although Montana argued that oral communication is inherently different from print communications, it failed to provide any evidence to support its position. Under the statute, disclosure was not required if a candidate or political action committee went to a town hall meeting and disparaged an opponent, even falsely. In addition, there was an inclusivity issue in light of the fact that the statute only referenced broadcast media, and not the Internet. (n) The statute also failed to cover speakers beyond candidates and political action committees. Montana failed to show that either candidates or political action committees	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	were the primary groups engaged in negative last-minute election advertising. In contrast, individuals, other organizations, and the press were free to place as many negative, misleading, or confusing advertisements as they liked, none of which were subject to the notice requirement. (o) As to the Equal Protection challenge, Montana Citizens alleged that there were two groups for comparison with respect to the disclosure provision: candidates and political action committees versus individuals; and endorsing political action committees versus non-endorsing political action committees. Montana Citizens had to show that a class that is similarly situated was treated disparately. Montana successfully argued that campaign laws tailored to reach only those groups with a primary political purpose are constitutionally permissible. Organizations that frequently engage in political speech can be required to disclose more information than organizations that do so only occasionally. Thus, political committees and candidates were not similarly situated to other individuals. (p) As to endorsing and non-endorsing political committees, they represented similarly situated groups that were classified based on their viewpoint on a candidate. That distinction was fundamental to the stated interest behind the statute. Strict scrutiny applied, and since Montana did not provide any argument or proof to support a compelling	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	interest in such viewpoint discrimination, the statute violated the Equal Protection clause. (q) Finally, the court noted that since exacting scrutiny required that the law be narrowly tailored, the statute would fail under either exacting scrutiny or strict scrutiny. 38. (a) In Wyoming Gun Owners v. Gray, 83 F.4th 1224 (10th Cir. 2023), the court applied the void for vagueness doctrine and the narrow tailoring requirement to hold that two key aspects of the state's statutory disclosure scheme for electioneering communications as applied to the plaintiff Wyoming Gun Owners were unconstitutional. (b) Plaintiff Wyoming Gun Owners ("WyGO") was a nonprofit corporation whose mission was to defend and advance the Second Amendment rights of all law-abiding citizens in Wyoming, and to expose legislators who refused to do the same thing. WyGO's members subscribed to receive communications from WyGO about issues relevant to state and local Second Amendment legislation. Anyone could sign up to receive emails from WyGO about gun policy and candidate positions. WyGO used a variety of media and methods to promote its messaging, including posts to its own website, dissemination of candidate surveys, videos, emails to members and nonmembers, radio ads, digital ads, social media posts, and direct mailings.	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	(c) WyGO maintained two bookkeeping accounts. One reflected online contributions and the other reflected mailed-in contributions. WyGo did not provide its donors a way to limit or earmark what projects their donations would fund. (d) In August 2020, before Wyoming's August primary election, WyGO paid a Cheyenne commercial radio station about $1,200 to run a minute-long radio ad. The ad mentioned two opposing state candidates by name: Anthony Bouchard and Erin Johnson. The ad commended Bouchard as a champion and a nationally known conservative leader who always led the fight for Wyoming gun owners. The ad criticized Erin Johnson, a self-described country-club, chamber of commerce moderate, for failing to discuss gun rights on her campaign website. The ad stated that this failure was pathetic and so was Erin Johnson. (e) On October 14, 2020, WyGO received a notice from the Election Division of the Wyoming Secretary of State's Office stating that the Division had received a complaint about the radio ad. The notice and a subsequent letter from the Attorney General stated that the ad was an electioneering communication that required the filing of campaign finance reports, which WyGO failed to do in violation of Section 22-25-106(h) of the Wyoming statutes. The notice required WyGO to pay a $500 civil fine.	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	(f) Section 22-25-106(h) provided in pertinent part: An organization that expends in excess of five hundred dollars ($500.00) in any primary, general, or special election to cause an independent expenditure or electioneering communication to be made shall file an itemized statement of contributions and expenditures with the appropriate filing office. The statement shall: (i) Identify the organization causing the electioneering communication or independent expenditure to be made and the individual acting on behalf of the organization causing the communication or expenditure to be made, if applicable; . . . (iv) Only list those expenditures and contributions which relate to an independent expenditure or electioneering communication; (v) Set forth the full and complete record of contributions which relate to an independent expenditure or electioneering communication, including cash, goods or services and actual and promised expenditures. The date of each contribution of one hundred dollars ($100.00) or more, any expenditure or obligation, the name of the person from whom received or to whom paid, and the purpose of each expenditure or obligation shall be listed. All contributions under one	

ACTIVITY	FEDERAL ELECTION CAMPAIGN ACT OF 1971, AS AMENDED ("FECA")	INTERNAL REVENUE CODE OF 1986, AS AMENDED ("I.R.C.")
STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	hundred dollars ($100.00) shall be reported but need not be itemized. Should the accumulation of contributions from a person exceed the one hundred dollar ($100.00) threshold, all contributions from that person shall be itemized. (g) Section 22-25-101(c) defined an electioneering communication as a communication that (i) refers to or depicts a clearly identified candidate for nomination or election to public office and that does not expressly advocate the nomination, election, or defeat of the candidate; (ii) can only be reasonably interpreted as an appeal to vote for or against the candidate; (iii) is made within thirty calendar days of a primary election, sixty calendar days of a general election, or twenty-one calendar days of any special election; and (iv) is targeted to the electors in the geographic area that the candidate would represent. (h) The court held that the phrase "relate to" in the requirement to file an itemized statement of contributions and expenditures that relate to an independent expenditure or electioneering communication was unconstitutionally vague as applied to WyGO. A court can find a statute unconstitutionally vague for one of two separate reasons. First, if it fails to provide people of ordinary intelligence a reasonable opportunity to understand what conduct it prohibits. Second, if it authorizes or encourages arbitrary	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	and discriminatory enforcement against advocacy organizations. Hill v. Colorado, 530 U.S. 703, 732 (2000). (i) Here, the "relate to" language authorized arbitrary enforcement and did not inform WyGO what is required of it so it may act accordingly. WyGO pooled all donations into one of two accounts: one for online donations, and another for mail-in donations. WyGO's system did not allow earmarking and did not track the journey of each dollar spent. The statute did not direct advocacy groups to set up accounts any differently and did not provide guardrails to help the government determine which donors should have been reported for the dollars spent on an advertisement. (j) The lack of guardrails invited arbitrary enforcement. It was far from clear how the Secretary of State could determine whether WyGO's reported contributions related to its electioneering communication. The bare, standardless "relate to" language authorized Wyoming to sanction WyGO for failing to adhere to the best method for deciding which contributions in an undifferentiated pool related to some communication – whatever it decided on an ad hoc and subjective basis. Wyoming could adopt the theory, as it did on appeal, that the statute required an organization in WyGO's position to disclose all contributions made during an election cycle as "related to" an ad. Another day it could find it proper for WyGO to pick and choose five donors	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	whose contributions collectively amounted to the communication's cost. What renders a statute vague was not the possibility that it will sometimes be difficult to determine whether the incriminating fact it establishes has been proved, but rather the indeterminacy of precisely what that fact is. United States v. Williams, 553 U.S. 285, 306 (2008). (k) The court also held that under Americans for Prosperity Foundation v. Bonta, the requirement to disclose the name of the person from whom a donation was received or to whom a donation was paid as applied to WyGO was not narrowly tailored to meet the governmental interest of knowing who is speaking about a candidate before an election. (l) Under narrow tailoring, the government must not only show a substantial relation between a disclosure scheme's burden and an important governmental interest, it must also show that the regime is narrowly tailored to the government's asserted interest. The narrow tailoring inquiry directs the court to consider the extent to which the burdens are unnecessary. Bonta, 141 S. Ct. at 2383, 2385. The breadth of legislative abridgement must be viewed in the light of less drastic means for achieving the same basic purpose. Shelton v. Tucker, 364 U.S. 479, 488 (1960).	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	(m) The state had a sufficiently important interest in providing the electorate with information about the sources of election-related spending to help citizens make informed choices in the political marketplace. The public had an interest in knowing who spoke through WyGO. The public could benefit from gathering information on candidate constituencies beyond their interest in gun rights, and from knowing the number of donors speaking through WyGO insofar as it shed light on the nature of a candidate's response to WyGO's advocacy. (n) The court also found that WyGO was not particularly burdened by the disclosure regime. WyGO was regulated for the functional equivalent of express advocacy rather than issue advocacy, and reported an annual budget of between $50,000 and $100,000. In addition, the statute's disclosure trigger of $100 was not too low, especially since smaller elections can be influenced by less expensive communications. Independence Institute v. Williams, 812 F.3d 787, 797. (o) The court then held that the statute's disclosure regime was not narrowly tailored to serve the state's informational interest. Under narrow tailoring, beyond proving a balanced relationship between the disclosure scheme's burdens and the government's interests, the government must demonstrate the need for the disclosure regime in light of any less intrusive alternatives. Bonta, 141 S. Ct. at 2386. It	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	was the government's burden to demonstrate that the challenged law furthered important governmental interests and was narrowly tailored. If the government failed to make that showing, it could not prevail. Cornelio v. Connecticut, 32 4th 160, 177 (2d Cir. 2022). (p) The statute's use of the language "relate to" not only failed to satisfy the void for vagueness doctrine, but also narrow tailoring. WyGO maintained two accounts; one for online donations and one for mailed-in donations. Its system did not have an earmarking mechanism that allowed donors to set aside contributions for one purpose or another. When WyGO needed to pay any expense, it pulled from one of two pools of undifferentiated contributions. It had no way to know which donor contributions related to that payment, which created confusion. (q) The court rejected the state's argument that WyGO should disclose all contributions over $100 received in the election cycle. Wyoming owed its citizens precision. A disclosure statute that burdened an advocacy group with muddling through ambiguous statutory text that failed to offer guidance on compliance did not provide that precision. The state's proposed overdisclosure solution would bear no relation to the government's informational interest; it would necessarily sweep in speakers who may have been interested in supporting a different candidate or no candidate or perhaps wished to preserve their privacy or anonymity. This	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	presented an unresolved problem for the state because the government must still justify the burden imposed. There was no de minimis exception for a speech restriction that lacked sufficient tailoring or justification. Cornelio, 32 4th at 176. (r) Rather than leave WyGO to twist in the wind, the statute could have provided for an earmarking system. An earmarking system better served the state's informational interest; it directly linked the speaker to content, whereas the state's solution diluted the statutory mission. The state did not explain why this solution was beyond its reach. (s) The court also rejected the argument that the First Circuit's decision in Gaspee Project v. Mederos, 13 F.4th 79 (1st Cir. 2021), cert. denied, 142 S. Ct. 2647 (2022) (discussed in Paragraph 24 above), required a different result. The First Circuit acknowledged the importance of allowing donors to opt out of a disclosure scheme while maintaining the ability to speak. The absence of an earmarking provision did not matter because the statute provided a specific carve-out procedure for donors to opt out from having their donations used for electioneering communications even if the entity to which they contributed had not created a segregated fund, which enabled donors to avoid disclosure. The Wyoming statute did not provide a similar mechanism. Furthermore, the First Circuit's suggestion that wary donors could just contribute less than $1,000 was an unacceptable risk here,	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	since Wyoming's disclosure requirements were triggered by a $100 donation. (t) Finally, the court rejected the holding of Delaware Strong Families v. Attorney General, 793 F.3d 304 (3d Cir. 2015), cert. denied, 136 S. Ct. 2376 (2016) (described in Paragraph 18 above), as a relic of pre-Bonta exacting scrutiny. The Delaware statute required advocacy shops that spent over $500 issuing an electioneering communication to disclose the names of donors who contributed over $100 during the election cycle. That law forced advocacy groups to bear the burden of overdisclosing donors despite a disconnect with an informational interest. See also Dinner Table Action v. Schneider, 2025 U.S. Dist. LEXIS 134052, at *18 (D. Me. July 15, 2025) (in November 2024 Maine voters passed by ballot initiative an act that required any person, party committee, or political action committee that makes any independent expenditure in excess of $250 during any one candidate's election to disclose the total contributions from each contributor regardless of the amount of the contribution; court pointed out that the act had no explicit opt-out provision for contributors who do not wish to fund independent expenditures and required the disclosure of contributors who give even very small amounts of money; "Where the Act's disclosure requirement sweeps so broadly and provides no meaningful opportunity for anonymous contributions, it	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	cannot be described as narrowly tailored to Maine's informational interest") (footnote omitted); Lakewood Citizens Watchdog Group v. City of Lakewood, 2021 WL 4060630 (D. Colo. Sept. 7, 2021) (under the narrow tailoring prong of exacting scrutiny, court declined to apply the electioneering communication reporting requirement of a municipal ordinance to an organization that published a newsletter on local issues; ordinance required the organization to report the name and address of any person who contributed more than $250 to it annually if the organization expended more than $500 annually on an electioneering communication; since the organization typically published two to three issues per year, the funds of a person who donated in January of a year that holds a November election may be spent on one of the earlier issues that would not be published within sixty days of an election, but the ordinance would still require the organization to report this person's information; "Donor A may wish to support [the newsletter's] coverage of local elections. Donor B may donate in order to support [the newsletter's] discussion of local non-election issues. There is no earmarking in the ordinance, so there is no indication that plaintiff knows the intentions of Donor A and Donor B. But the ordinance requires plaintiff to disclose their information equally so long as they both donate over $250 annually. This creates a 'mismatch' between the interest served –	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	knowing who is speaking about a candidate – and the information given"). DETERMINATION OF WHETHER COMMUNICATIONS ARE EXPRESS ADVOCACY 39. (a) An organization whose major purpose is to engage in express advocacy must register as a political committee. 52 U.S.C. §30101(4)(A) (formerly 2 U.S.C. §431(4)(A)); Buckley v. Valeo, 424 U.S. 1, 79 (1976) (per curiam); Political Committee Status, 72 F.R. 5,595, 5,597, 5,601 (Feb. 7, 2007). In addition, an organization that makes independent expenditures for express advocacy must satisfy reporting and disclosure requirements. 52 U.S.C. §30104(c) (formerly 2 U.S.C. §434(c)); 11 C.F.R. §109.10). Accordingly, the determination of whether a communication is express advocacy is critical. See generally Miriam Galston, "Outing Outside Group Spending and the Crisis of Nonenforcement," 32 Stanford Law & Policy Review 253, 272-88 (July 2021). (b) All political committees, other than authorized committees, that make independent expenditures must disclose these expenditures to the FEC as part of their regular reporting. 52 U.S.C. §30104(b)(4)(G) and (H)(iii). Political committees and other persons that make independent expenditures aggregating $1,000 or more after	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	the 20th day, but more than twenty-four hours before, the date of an election must report the expenditures by filing a 24-hour notice. 52 U.S.C. §30104(g)(1)(A); 11 C.F.R. §104.4(b)(1). Political committees and other persons that make independent expenditures aggregating $10,000 or more for an election in any calendar year, up to and including the 20th day before an election, must report the expenditures by filing a 48-hour notice. 52 U.S.C. §30104(g)(2); 11 C.F.R. §104.4(b)(2). (c) An independent expenditure is an expenditure expressly advocating the election or defeat of a clearly identified candidate, and that is not made in concert or cooperation with or at the request or suggestion of such a candidate, the candidate's authorized political committee, or their agents, or a political party or its agents. 52 U.S.C. §30101(17); 11 C.F.R. §100.16. (d) The FEC regulations provide two definitions of express advocacy. The first definition is provided by 11 C.F.R. §100.22(a), and states that expressly advocating means any communication that: Uses phrases such as "vote for the President," "re-elect your Congressman," "support the Democratic nominee," "cast your ballot for the Republican challenger for U.S. Senate in Georgia," "Smith for Congress," "Bill McKay in '94," "vote Pro-Life" or "vote Pro-Choice" accompanied by a listing of	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	clearly identified candidates described as Pro-Life or Pro-Choice, "vote against Old Hickory," "defeat" accompanied by a picture of one or more candidate(s), "reject the incumbent," or communications of campaign slogans or individual word(s), which in context, can have no other reasonable meaning than to urge the election or defeat of one or more clearly identified candidate(s), such as posters, bumper stickers, advertisements, etc. which say "Nixon's the One," "Carter '76," "Reagan/Bush" or "Mondale!" (e) The second definition is provided by 11 C.F.R. §100.22(b): When taken as a whole and with limited reference to external events, such as the proximity to the election, could only be interpreted by a reasonable person as containing advocacy of the election or defeat of one or more clearly identified candidates(s) because–(1) The electoral portion of the communication is unmistakable, unambiguous, and suggestive of only one meaning; and (2) Reasonable minds could not differ as to whether it encourages actions to elect or defeat one or more clearly identified candidate(s) or encourages some other kind of action. (f) Both definitions use the term "clearly identified candidate." In Hispanic Leadership Fund, Inc. v. Federal Election Commission, 897 F. Supp. 2d 407 (E.D. Va. 2012), in holding that five advertisements were electioneering	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	communications under 52 U.S.C. §30104(f)(3)(A)(i) (formerly 2 U.S.C. §434(f)(3)(A)(i)), the court found that the advertisements referred to a clearly identified candidate by unambiguous reference. Under 52 U.S.C. §30101(18) (formerly 2 U.S.C. §431(18)), an advertisement can refer to a clearly identified candidate in three ways: (i) the name of the candidate; (ii) a photograph or drawing of the candidate; or (iii) the identity of the candidate is apparent by unambiguous reference. (g) Under the FEC regulations, the identity of a candidate is apparent through an unambiguous reference such as "the President," "your Congressman," or "the incumbent," or through an unambiguous reference to his or her status as a candidate such as "the Democratic presidential nominee" or "the Republican candidate for Senate in the State of Georgia." 11 C.F.R. §100.29(b)(2). (h) The court held that the ordinary and unambiguous meaning of the phrase "the identity of the candidate is apparent by unambiguous reference" is that the identity of the federal candidate would be apparent, i.e., clear to a reasonable, objective person viewing the advertisement in the context of the reference. (i) Advertisement One begins with video images of gas prices and gasoline pumps, while an announcer says, "Since this Administration began, gas prices are up 104%. And the	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	U.S. still spends over $400 billion a year on foreign oil." The advertisement continues, showing an image of the White House while the announcer says, "The White House says: We must end our dependence on foreign oil." The video then changes to images of oil rigs and science labs, while the announcer says, "But the Administration stopped American energy exploration." The video then changes to stock footage "of 'Denied' Stamp with image of [the] White House," while the announcer states, "and banned most American oil and gas production–the White House wants foreign countries to drill–so we can buy from them." The video then changes to an image described only as "Middle East oil" as the announcer states "Keeping us dependent on foreign oil–and crippling our economy." The advertisement closes by showing the onscreen text "Call the White House at (202) 456-1414," while the announcer says, "Tell the White House it's time for an American energy plan . . . that actually works for America." (j) The court held that Advertisement One is an electioneering communication because it is apparent that the references to "the White House" and "the Administration" are contextually unambiguous references to a candidate for public office, President Obama. (k) Advertisement Two begins with video images of gas prices and gasoline pumps, while the announcer states, "Since 2008 began, gas prices are up 104%. And the U.S.	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	still spends over $400 billion a year on foreign oil." The advertisement the shows an image of the Washington Monument, while the announcer states, "The government says," followed by an audio clip of President Obama saying, "We must end our dependence on foreign oil." The video then changes to images of oil rigs and science labs, while the announcer states, "But the government stopped American energy exploration." The video changes to stock footage of a "'Denied' Stamp with image of the Washington Monument," while the announcer states "and banned most American oil and gas production–the government wants foreign countries to drill–so we can buy from them." The video then changes to an image described only as "Middle East oil" as the announcer states, "Keeping us dependent on foreign oil–and crippling our economy." The advertisement closes by continuing to show the Middle East oil image, while the announcer states, "Tell the government it's time for an American energy plan . . . that actually works for America." (l) The court held that Advertisement Two is not an electioneering communication because it is not apparent that the reference to "the government" is a contextually unambiguous reference to President Obama. An audio clip of President Obama speaking only an eight word sentence is immediately preceded by the announcer saying "the government says." Other than the audio clip, there is no other reference to President Obama, nor is there any	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	reference to "the White House" or to "the Administration." Because the audio clip of President Obama is not identified as such, whether the advertisement refers to President Obama depends entirely on whether the viewer actually recognizes the voice of the person speaking. Although the FEC argues that President Obama's voice is widely recognized, there is no factual basis for reaching this conclusion. (m) Advertisement Three begins with video images of gas prices and gasoline pumps, while the announcer states, "Since 2008 began, gas prices are up 104%. And the U.S. still spends over $400 billion a year on foreign oil." The advertisement then shows an image of the Washington Monument, while the announcer states, "The government says," followed by an audio clip of the White House Press Secretary saying, "We must end our dependence on foreign oil." The video then changes to images of oil rigs and science labs, while the announcer states, "But the government stopped American energy exploration." The video changes to stock footage of a '"Denied' Stamp with image of [the] Washington Monument, while the announcer states "and banned most American oil and gas production–the government wants foreign countries to drill–so we can buy from them." The video then changes to an image described only as "Middle East oil" as the announcer states, "Keeping us dependent on foreign oil–and crippling our economy." The advertisement closes by showing the	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	onscreen text "Call the White House at (202) 456-1414," while the announcer says, "Tell the government it's time for an American energy plan . . . that actually works for America." (n) The court held that Advertisement Three is not an electioneering communication because it is not apparent that references either to "the government" or to "the White House" are contextually unambiguous references to a candidate. Although there is an audio clip of the White House Press Secretary, there is no identification as such as there is nothing in the record to suggest that an objective listener would recognize the voice of the White House Press Secretary. Since it is not apparent that either "the government" or "the White House" unambiguously refers to President Obama, this advertisement is not an electioneering communication. (o) Advertisement Four opens with a series of images described as "Americana," "the Washington Monument," "the United States Supreme Court courthouse," and "the United States Capitol," while the announcer states, "The most basic American right . . . the First Amendment freedom of religion." The advertisement then shows images of the Department of Health and Human Services building, while the announcer states, "But the Administration is taking a stand on a critical question of religious liberty. Against the U.S. Catholic bishops . . . and people of faith	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	across the country." The advertisement then shows images of churches and families, while the announcer states, "Forcing religious institutions to pay for abortion-causing drugs . . . Violating their conscience and religious beliefs." The advertisement then closes by showing White House footage and images with the onscreen text "Call Secretary Sebelius at 1-877-696-6775," while the announcer says, "Call Secretary Sebelius, tell her it's wrong for her and the Administration to trample the most American right." (p) The court held that Advertisement Four is an electioneering communication because it is apparent that "the Administration" is a contextually unambiguous reference to President Obama. The term "the Administration" is used in the context of telling viewers to call Secretary Sebelius to "tell her that it's wrong for her and the Administration to trample [this right]" while displaying footage of the White House. This combination of "the Administration" an entity separate from Secretary Sebelius with the footage of the White House makes clear that the "the Administration" refers to President Obama–he is the head of the Administration and he resides and works at the White House. (q) Advertisement Five opens with a video of a toddler throwing a tantrum while the announcer states, "The Terrible Twos." The image then changes to a frustrated parent holding a toddler, while the announcer states, "All	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	parents dread the phase." The text, '"White House will not mark two year anniversary' of health care law (Washington Free Beacon, 3/19/12)," is displayed, while the announcer states, "And now that government run healthcare is turning two, its own parents don't even want to celebrate. The health care law is showing all the Terrible Two warning signs." The advertisement then shows videos of toddlers, while the announcer states, "Mood swings . . . Temper tantrums." As the video continues, the text "[as much as a] '3 percent increase in health insurance premiums' (FactCheck.org, 1/4/12)" is displayed as the announcer states, "It was supposed to lower premiums, now it's going to cost you more." The text then changes to '"CBO: . . . to cost twice as much' (Fox News, 3/16/12)," while the announcer states, "Yes, the Terrible Twos are more expensive than you think." The onscreen text changes to "[Many workers] 'will not, in fact, be able to keep what they currently have' (Time, 6/24/10)," while the announcer states, "The toddler will tend to say 'no' a lot." The onscreen text then changes to '". . . allies get waivers . . .' (Washington Examiner, 5/23/11)," while the announcer states, "Some parents will give in to the child's every demand. Doing so can have short-term benefits, but in the long term, this will create a monster." The toddler sequence then closes with the on-screen text changing to "'crushing penalties' (Human Events, 3/4/12)," while the announcer states, "Sadly, most parents have to pay the price for not	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	complying with these mandates." The image then changes to the text, "'White House will not mark two-year anniversary' of health care law (Washington Free Beacon, 3/19/12)," while the announcer then states, "So . . . Since its family won't wish its health care law a happy birthday." The image then changes to the text, "Happy 2nd Birthday, Meh" and "HispanicLeadershipFund.org," as the announcer states, "I guess we'll have to. Happy Birthday national, government healthcare, may none of your wishes come true." (r) The court held that Advertisement Five is an electioneering communication because it is apparent that the term "the parent" is a contextually unambiguous reference to President Obama. The announcer refers to "the parents of government run health care," and "its family" while the text "White House will not mark two year anniversary" is displayed. Taken together, this combination of footage and audio is a clear reference to President Obama; there are two "parents" to the health care bill, Congress and the President, and the text that refers to the White House makes clear that "the parent" referred to in the advertisement is President Obama. 40. (a) In FEC Advisory Opinion 2012-27, the FEC opined without explanation that the following three advertisements were not express advocacy under 11 C.F.R. §100.22.	

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	(b) The Ethically Challenged advertisement stated, "Nydia Velazquez. Ethically challenged. A key supporter of the Troubled Asset Relief Program. Calls bailed-out Wall Street greedy one day, but takes hundreds of thousands from it the next. A leader you can believe in? Call Nydia Velazquez and let's make sure we end the bailouts that bankrupt America." (c) The Stop the Liberal Agenda advertisement stated, "Harry Reid: Willing to put America's service men and women at risk through his risky sequestration gamble. Willing to put politics above common sense and protecting the men and women who defend our nation. Stop the insanity, stop sequestrations, stop Reid's twisted liberal agenda. This fall, get educated about Harry Reid, get engaged, and get active." (d) The Don't Trust Harry Reid advertisement stated, "What kind of leader is Harry Reid? Ineffective. Ultra-liberal. Unrepresentative of Nevada values. Harry Reid voted for increasing Tricare premiums to nickel and dime America's heroes. Veterans and service men and women know better than to trust Harry Reid. This November: support new voices, support your military, support Nevada values." See also MURs 8215 & 8216 (Last Best Place PAC), Statement of Reasons of Chairman Sean J. Cooksey and Commissioners Allen J. Dickerson, Dara Lindenbaum &	

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	James E. "Trey" Trainor, III (Tim Sheehy was a Republican candidate for U.S. Senate in the June 4, 2024 Montana Republican primary; the first ad, "Shady Sheehy," appears to have started running on Sept. 12, 2023 with an unknown end date; voiceover stated that Shady Sheehy, a multimillionaire, got an over $770.000 government loan and never paid it back; the second ad, "Millionaire Politician," also appears to have started running in Sept. 2023 with an unknown end date; voiceover stated that Shady Sheehy made millions off government contracts and took an over $770,000 government loan and walked away; FEC found that the ads were not express advocacy under the "magic words" approach of 11 C.F.R. §110.22(a); the ads do not expressly encourage the listener to vote a certain way or republish a campaign slogan, but rather denigrate Sheehy's character by calling him "shady," which means untrustworthy in the context of the ad; FEC also found that the ads were not express advocacy under the reasonable minds test of 11 C.F.R. §110.22(b); in prior express advocacy matters involving attacks on a candidate's character, the FEC relied on proximity of the ad to the election; here the ads began running in September, approximately nine months before the June 4 primary; "While there is no bright line rule on timing, it is axiomatic that the further an ad is run from a given election, the more likely that reasonable minds could differ about whether the	

ACTIVITY	FEDERAL ELECTION CAMPAIGN ACT OF 1971, AS AMENDED ("FECA")	INTERNAL REVENUE CODE OF 1986, AS AMENDED ("I.R.C.")
STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	ad constitutes an 'exhortation to vote for or against a specific candidate.'"). MUR 6974 (Foundation for a Secure and Prosperous America) (four videos posted on YouTube and two advertisements posted on YouTube and broadcast for a fee on television were not express advocacy; advertisements asserted that Senator Rand Paul, a candidate for the Republican nomination for President, supported President Obama's negotiations with Iran, stressed that the possibility of nuclear weapons in Iran posed a grave threat, told viewers that Paul was "wrong and dangerous," and exhorted viewers to "tell him to stop siding with Obama," first advertisement was broadcast nationally with a focus on Iowa, New Hampshire, and South Carolina, where Paul was making appearances; second advertisement was run in heavy rotation on cable and satellite TV in Iowa and New Hampshire where Paul was making numerous appearances; other YouTube videos contained the same thematic content and similar or identical images and language; since the advertisements did not reference the Presidential election or urge the viewer to vote in any manner, they were not express advocacy; the advertisements encouraged the viewer to attempt to influence Paul's views and votes on the Iran sanctions negotiations).	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	41. (a) In FEC Advisory Opinion 2012-11, the FEC opined on whether the following advertisements were express advocacy. (b) The Financial Reform radio and newspaper advertisements stated, "President Obama supported the financial bailout of Fannie Mae and Freddie Mac, permitting himself to become a puppet of the banking and bailout industries. What kind of person supports bailouts at the expense of average Americans? Not any kind we would vote for and neither should you. Call President Obama and put his antics to an end." (c) The FEC opined that the Financial Reform advertisements contained express advocacy under 11 C.F.R. §100.22(a). They identify a candidate (President Obama) with a position on an issue (bailouts), and then state that the viewers should vote against those who take that issue position. In addition, the final sentence, "Call President Obama and put his antics to an end," does not negate the fact the advertisements contain express advocacy. (d) The Health Care Crisis radio and newspaper advertisements stated, "President Obama supports socialized medicine, but socialized medicine kills millions of people worldwide. Even as Americans disapproved of ObamaCare, he pushed ahead to make socialized medicine a reality. Put	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	an end to the brutality and say no to socialized medicine in the United States." (e) The FEC opined that the Health Care Crisis advertisements were not express advocacy because they did not have any electoral reference. (f) The Gun Control Facebook advertisement stated, "(Picture of handgun, 110 pixels wide by 80 pixels tall) (Title: Stand Against Gun Control) Obama supports gun control. Don't trust him. Support Wyoming state candidates who will protect your gun rights. (g) The FEC opined that the Gun Control Facebook advertisement was not express advocacy because it did not have any federal electoral references. (h) The Ethics Television advertisement provided, "Audio: Who is President Obama? Video: Picture of President Obama shaking hands with Hugo Chavez. Audio: He preaches the importance of high taxes to balance the budget, but nominates political elites who haven't paid theirs. Video: Fade to another picture of Obama giving State of the Union, superimposed 'Obama Aims $1.4 Trillion Tax Increase at Highest Earners (San Francisco Chronicle, Feb. 14, 2011).' Audio: He talks about budget and tax priorities, but passes a blind eye to nominees who don't contribute their fair share. Video: Cut to picture on left side of screen	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	of Secretary of Treasury Timothy Geithner giving testimony, superimposed 'Geithner apologizes for not paying taxes (CBS News, Feb. 18, 2009.)' Audio: Call President Obama and tell him you don't approve of his taxing behavior. Video: Picture fades in on right side of screen of Tom Daschle, superimposed 'Tax Woes Derail Daschle's Bid for Health Chief (NPR, Feb. 3, 2009).' Fade to picture of President Obama and Michelle Obama enjoying themselves in Hawaii. (i) The FEC opined that the Ethics Television advertisement was not express advocacy because it did not contain any electoral references. 42. (a) In Citizens for Responsibility & Ethics in Washington v. Federal Election Commission, 209 F. Supp. 3d 77 (D.D.C. 2016), appeal dismissed, 2017 WL 4957233 (D.C. Cir. April 4, 2017) (district court order remanding the case to the FEC was not a final, appealable order), the court addressed the role of communications that were not express advocacy in the determination of whether an organization's major purpose was the nomination or election of a candidate so that it became a political committee subject to FEC registration and disclosure. (b) In 2010, American Action Network ("AAN"), a Section 501(c)(4) organization, spent $1,065,000 on three versions of the following television advertisement, which ran in the	

ACTIVITY	FEDERAL ELECTION CAMPAIGN ACT OF 1971, AS AMENDED ("FECA")	INTERNAL REVENUE CODE OF 1986, AS AMENDED ("I.R.C.")
STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	districts of three different candidates for Congress in the lead-up to that year's election: [On-screen text:] Congress doesn't want you to read this. Just like [candidate]. [Candidate] & Nancy Pelosi rammed through government healthcare. Without Congress reading all the details. $500 billion in Medicare cuts. Free healthcare for illegal immigrants. Even Viagra for convicted sex offenders. So tell [candidate] to read this: In November, Fix the healthcare mess Congress made. (c) Three FEC Commissioners concluded that AAN's spending on these ads should not be considered in evaluating whether AAN's major purpose was the nomination or election of a candidate. The court held that this conclusion was contrary to law, and remanded the case to the FEC for its reconsideration. (d) The court held that "it blinks reality to conclude that many of the ads considered by the Commissioners in this case were not designed to influence the election or defeat of a particular candidate in an ongoing race." 209 F. Supp. 3d at 93. The FEC had the erroneous understanding that the First Amendment effectively required the agency to exclude from its consideration all nonexpress advocacy in the context of disclosure. The court relied on the case law that in the context of disclosure, there is no longer a distinction	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	between express advocacy, electioneering communications, and issue advocacy. (e) With respect to the time period for determining an organization's major purpose, the court held that it is not per se unreasonable that the Commissioners would consider a particular organization's full spending history as relevant to its analysis. However, looking only at relative spending over an organization's lifetime runs the risk of ignoring the not unlikely possibility that an organization's major purpose can change. (f) The Commissioners' refusal to give any weight to an organization's relative spending in the most recent calendar year indicates an arbitrary failure to consider an important aspect of the relevant problem. The court explained: The seriousness of that failure would only increase with the lifespan of the challenged organization: A half-century-old organization with a substantial spending history could commence spending handsomely on election-related ads and continue such expenditures for decades before its new "major purpose" would be detected by the controlling Commissioners' lifetime-only approach. Surely, that cannot be what Congress contemplated in defining "political committee" in terms of calendar-year spending under FECA, see 52 U.S.C. §30101(4) (defining political committee as an entity with more than $1,000 in	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	contributions or expenditures *in a calendar year*), nor can it be what the Supreme Court intended with its "major purpose" narrowing instruction, see MCFL, 479 U.S. at 262, 107 S. Ct. 616. [209 F. Supp. 3d at 94] (g) Finally, the court held that in determining an organization's major purpose, a reasonable application of the rule that an organization must spend at least 50% of its expenditures on campaign-related expenditures would not appear to be arbitrary and capricious. 43. (a) On remand, the FEC split 3-3 and dismissed the complaint of Citizens for Responsibility & Ethics in Washington ("CREW") against AAN. On appeal from the FEC's dismissal, the federal district court granted CREW's motion for summary judgment, and remanded the case to the FEC to conform to the court's decision. Citizens for Responsibility & Ethics in Washington v. Federal Election Commission, 299 F. Supp. 3d 83 (D.D.C. 2018), appeal dismissed, 2018 WL 5115542 (D.C. Cir. Sept. 19, 2018). (b) The court held that under Citizens United, for disclosure purposes the First Amendment does not require that a regulated communication contain the functional equivalent of express advocacy. Rather, under the Bipartisan Campaign Reform Act of 2002, electioneering communications presumptively have an election-related purpose. In turn, to the extent that the FEC considers an	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	entity's spending in assessing its major purpose, it must presumptively treat spending on electioneering ads as indicating a purpose of nominating or electing a candidate. But see Zachary G. Parks, "Federal Court Decision Puts Brakes on Issue Ads," Inside Political Law (March 21, 2018) ("[W]hile BCRA imposed reporting requirements on electioneering communications because of their potential electoral effect, it does not necessarily follow that Congress intended these ads to count as political spending under the 'major purpose' test. As a result, the Court's reading of BCRA as reflecting an implicit Congressional decision to define the 'major purpose' test is debatable. Further, 'electioneering communications' include only TV and radio advertisements. The logic of the Court's decision, therefore, suggests that direct mail or digital issue advertisements are not presumptively political while TV and radio advertisements with the same content distributed at the same time are presumptively political.") (available at https://www.insidepoliticallaw.com/2018/03/21/federal-court-decision-puts-brakes-issue-ads/). (c) The court also noted that overcoming the presumption would be difficult: [C]ongress seems to have left open a small interpretive gap after BCRA: one that allows the Commission, using its case-by-case approach, to deem an extraordinary "electioneering	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	communication" as lacking an election-related purpose. The following ad, for example, would seem to fall within the letter of BCRA's definition: It runs 60 days before a midterm election; it does not mention the election or even indirectly reference it (e.g., by cabining the message's timeframe to "this November"); the meat of the ad discusses the substance of a proposed bill; the ad urges the viewer to call a named incumbent representative and request that she vote for the bill; but it does not make any reference to the incumbent's prior voting history or otherwise criticize her. See 52 U.S.C. §30104(f)(3)(A). That might be the sort of electioneering communication that could, under the Commission's case-by-case approach, properly be deemed lacking an election-related purpose under Buckley despite meeting BCRA's definition of "electioneering communication." But the Court expects such an ad to be a rare exception. Congress has made a judgment that run-of-the mill electioneering communications have the purpose of influencing an election; an ad meeting the statutory definition of an electioneering communication generally indicates a purpose of nominating or electing a candidate. [299 F. Supp. 3d at 97] 44. (a) In Citizens for Responsibility and Ethics in Washington v. Federal Election Commission, 316 F. Supp. 3d 349 (D.D.C. 2018), emergency motion for a stay pending appeal	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	denied, 904 F.3d 1014 (D.C. Cir. 2018) (per curiam), application for stay denied sub nom. Crossroads Grassroots Policy Strategies v. Citizens for Responsibility and Ethics in Washington, 139 S. Ct. 50 (2018) (mem.), the court invalidated 11 C.F.R. §109.10(e)(1)(vi) dealing with the reporting and disclosure obligations of nonpolitical committees that make independent expenditures. (b) Under 52 U.S.C. §30104(c)(2)(C), if a nonpolitical committee makes independent expenditures of more than $250 in a calendar year, it must file disclosure statements with the FEC that identify "each person who made a contribution in excess of $250 . . . which was made for the purpose of furthering an independent expenditure." (c) Under 11 C.F.R. §109.10(e)(1)(vi), the disclosure statement had to identify "each person who made a contribution in excess of $200 to the person filing such report, which contribution was made for the purpose of furthering the reported independent expenditure." (d) The FEC regulation allowed nonpolitical committees, such as Section 501(c)(4) social welfare organizations, Section 501(c)(6) trade associations, and Section 527 organizations to make independent expenditures without disclosing the sources of their funding unless their contributors earmarked their contributions for specific communications.	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	(e) The court held the FEC regulation invalid: In contravention of the broad disclosure that Congress intended when enacting the 1979 FECA Amendments, this regulation falls short in two distinct ways. First, the challenged regulation wholly fails to implement another disclosure requirement, mandated in 52 U.S.C. §30104(c)(1), requiring reporting not-political committees to identify non-trivial donors, as well as the date and amount of their contributions, when the contributions were made for political purposes to influence any election for federal office, or at the request or authorization of a candidate or the candidate's agent. Such contributions may, in fact, be intended to fund the not-political committee's own contributions and be routed to candidates, political parties, or political committees, such as Super PACs. Second, the challenged regulation impermissibly narrows the mandated disclosure in 52 U.S.C. §30104(c)(2)(C), which requires the identification of such donors contributing for the purpose of furthering the not-political committee's own express advocacy for or against the election of a federal candidate, even when the donor has not expressly directed that the funds be used in the precise manner reported. [316 F. Supp. 3d at 423] (f) Under the court's holding, an organization must report all contributors that made contributions for the purpose of influencing a federal election or at the request of a federal	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	candidate. The organization must also report all contributors that gave for the purpose of funding any of the organization's independent expenditures, and not only the independent expenditure being reported. (g) An organization does not have to disclose contributors for the organization's general programs. To come under this rule, an organization should avoid soliciting funds for election related purposes, and showing potential contributors campaign advertisements during pitch sessions. Contributors that wish to avoid disclosure should do their own due diligence and obtain written representations from the organization of how their contributions will be used. An open issue is whether disclosure is required if the organization solicits contributions to influence federal elections, and the contributor makes a contribution with written instructions that the organization can use the contribution for any of the organization's exempt purposes. See also Covington & Burling, "Contributions to Politically Active Outside Groups: Risk Areas and Advice for Donors," at 5 (Oct. 9, 2018) ("The CREW decision represents a potential sea change in political disclosure law for politically active nonprofits and LLCs, and the corporations and individuals who contribute to them. Because of the expansive interpretation of the disclosure requirements, any donation to an organization that makes independent expenditures is potentially subject to disclosure, depending	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	on a number of factors, such as how the group solicits donations and the donor's intent when making the donation.").	
	(h) After the district court's decision, the FEC issued the following guidance for disclosure of contributors to nonpolitical committees that make independent expenditures, such as Section 501(c)(4) social welfare organizations and Section 501(c)(6) trade associations. Under 52 U.S.C. §30104(c)(1), the organization that makes independent expenditures must report the identities of all persons that make contributions to the organization greater than $200 earmarked for a political purpose and intended to influence elections. However, the guidance does not provide the criteria for determining when a contribution is earmarked for independent expenditures, contributions to candidates, or for other political purposes. Under 52 U.S.C. §30104(c)(2)(C), a nonpolitical committee must report those donors of over $200 who contribute for the purpose of furthering an independent expenditure. These donors are a subset of those contributors required to be identified in subsection (c)(1). Subsection (c)(2)(C) is properly read to cover contributions used by the nonpolitical committee for express advocacy for or against the election of a federal candidate, whereas subsection (c)(1) covers contributions used for other political purposes in support or opposition to federal candidates by the organization for contributions directly to candidates, candidate committees, political party	

ACTIVITY	FEDERAL ELECTION CAMPAIGN ACT OF 1971, AS AMENDED ("FECA")	INTERNAL REVENUE CODE OF 1986, AS AMENDED ("I.R.C.")
STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	committees, or super PACs. Press Release, "FEC Provides Guidance Following U.S. District Court Decision in CREW v. FEC, 316 F. Supp.3d 349 (D.D.C. 2018)" (Oct. 4, 2018) (available at https://www.fec.gov/updates/fec-provides-guidance-following-us-district-court-decision-crew-v-fec-316-f-supp-3d-349-ddc-2018/). See also Wisconsin Family Action v. Federal Election Commission, 2022 WL 844436 (E.D. Wis. March 22, 2022) (FEC acknowledged that Section 30104(c) does not require a nonpolitical organization to disclose all donors because it makes independent expenditures aggregating more than $250 with respect to a given election in a calendar year; a nonpolitical organization that makes independent expenditures exceeding $250 must disclose only those donors whose contributions are earmarked for political purposes and are tied to a federal election). (i) Query whether the FEC guidance by using the amoeba-like amorphous term "earmark" impermissibly enables organizations that make substantial independent expenditures to avoid disclosure of their contributors by claiming that none of their contributors intended their contributions to support those expenditures. See also Miriam Galston, "Outing Outside Group Spending and the Crisis of Nonenforcement," 32 Stanford Law & Policy Review 253, 299 (July 2021) ("[P]olitically active	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	tax-exempt organizations usually have mixed purposes because according to the tax law, their campaign activity cannot be their primary purpose. This has enabled these groups to deny that any of their donors have political purposes even when nearly one-half of their activities or spending is directed to electoral outcomes.").	
	(j) In Citizens for Responsibility and Ethics in Washington v. Federal Election Commission, 971 F.3d 340 (D.C. Cir. 2020), the Court of Appeals affirmed the district court's decision. First, the language of 52 U.S.C. §30104(c)(1) unambiguously requires that an entity making over $250 in independent expenditures must disclose the name of any contributor whose contributions during the relevant reporting period total $200, along with the date and amount of each contribution. Second, under 52 U.S.C. §30104(c)(2)(C), an entity must identify each person who made a contribution in excess of $200 to the independent expenditure maker that was made for the purpose of furthering any independent expenditure. Cf. Van Hollen v. Federal Election Commission, 811 F.3d 486 (D.C. Cir. 2016) (under 52 U.S.C. §30104(f), a person who makes a disbursement for electioneering communications must disclose "the names and addresses of all contributors who contributed an aggregate amount of $1,000 or more to the person making the disbursement;" court upheld the FEC regulation, 11 C.F.R. §104.20(e)(10),	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	that required corporations and unions to disclose all donations totaling $1,000 or more that were made for the purpose of furthering electioneering communications; since the terms "contributors" and "contributed" in the statute were ambiguous; the regulation was a reasonable exercise of an administrative agency's discretion; requiring disclosure of funds received only from those persons who donated specifically for the purpose of furthering electioneering communications appropriately provides the public with information about those persons who actually support the message conveyed by the electioneering communications without imposing on corporations and labor organizations the significant burden of disclosing the identities of the vast numbers of customers, investors, or members who have provided funds for purposes entirely unrelated to the making of electioneering communications). (k) In an interim final rule, the FEC struck 11 C.F.R. §109.10(e)(1)(vi), and stated that 52 U.S.C. §30104(c) and the remaining provisions of 11 C.F.R. §109.10 remain in force. 87 F.R. 35863-01 (June 14, 2022). (l) The guidance described in subparagraph (h) continues in effect. Nevertheless, it continues to be unresolved when a contribution is earmarked for political purposes. Examples of unresolved questions are: (i) a donor provides funds for get-out-the-vote drives; (ii) a donor makes a contribution following a presentation from an outside group describing	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	its activities; and (iii) a donor makes a contribution intended to further an issue advertisement whose purpose is, at least in part, to defeat a particular candidate. (m) In tandem with the issuance of the interim final rule, three Republican Commissioners, Chairman Allen Dickerson and Commissioners Sean J. Cooksey and James E. "Trey" Trainor, III issued a Policy Statement Concerning the Application of 52 U.S.C. §30104(c) (June 8, 2022). The Commissioners stated that absent rulemaking, the donor disclosure requirement is effectively unenforceable due to the absence of clear direction from the FEC on which donations to non-committee organizations are earmarked for political purposes. The Commissioners also stated their position that a contribution is earmarked for political purposes and therefore reportable only if it is designated or solicited for, or restricted to, activities or communications that expressly advocate the election or defeat of a clearly identified candidate for federal office. (n) Under this position, a reportable contribution occurs when a donor makes a contribution designated for independent expenditures, or in response to a solicitation for funds to be used for express advocacy communications or activities. A reportable contribution does not occur when a donor makes an unrestricted contribution, a contribution designated for nonelectoral purposes, or a contribution made in response to a general solicitation to support the	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	organization's mission, regardless of whether the funds are subsequently used for express advocacy. For example, contributions made to support issue advocacy communications other than electioneering communications, get-out-the vote drives, and other efforts to influence elections that do not involve express advocacy would not be reportable. (o) A donor concerned with whether a contribution will be reportable should carefully review the language of solicitations from an outside group, and any instructions provided for the contribution, whether in an assurance letter or in oral communications. <u>COORDINATED COMMUNICATIONS</u> 45. (a) An expenditure that a payor coordinates with a candidate or party is treated as an in-kind contribution when "it is made by any person in cooperation, consultation, or concert, with, or at the request or suggestion of," a candidate, a candidate's authorized committee, a political party committee, or their agents. 52 U.S.C. §30116(a)(7)(B)(i) (formerly 2 U.S.C. §§441a(a)(7)(B)(i)). The FEC regulations contain a general coordination rule under 11 C.F.R. §109.20, and a coordinated communications rule under 11 C.F.R. §109.21.	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	(b) Expenditures by supporters of a candidate that are coordinated with the candidate are in effect "disguised contributions" that raise the same corruption concerns as direct contributions to the candidate. Buckley v. Valeo, 424 U.S. 1, 46-47 (1976) (per curiam). Congress can regulate coordinated expenditures as contributions to distinguish between "independent expressions of an individual's views and the use of an individual's resources to aid in a manner indistinguishable in substance from the direct payment of cash" to a candidate. H.R. Rep. No. 94-1057, at 59 (1976) (Conf. Rep.), reprinted in 1976 U.S.C.C.A.N. 946, 974; see also Shays v. Federal Election Commission, 528 F.3d 914, 919-20 (D.C. Cir. 2008) ("Without a coordination rule, politicians could evade contribution limits and other restrictions by having donors finance campaign activity directly, e.g., by asking a donor to buy air time for a campaign-produced advertisement."). Cf. National Republican Senatorial Committee v. Federal Election Commission, 609 U.S. 908, 146 S. Ct. 2404 (2026) (Court struck down amount limitations under 52 U.S.C. §30116 on coordinated party expenditures by political party on party's candidates; national party committees (DNC, DSCC, DCCC, RNC, NRSC, and NRCC) and federal accounts of state parties can spend unlimited funds to support individual federal candidates in coordination with those candidates).	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	See generally Michael D. Gilbert & Brian Barnes, "The Coordination Fallacy," 43 Florida State University Law Review 399, 408, 411-12 (Winter 2016) ("An oil baron gives money to a Super PAC run by a politician's friend who, up until 121 days ago, worked for the politician. The Super PAC runs a supportive ad. The politician did not request the ad, nor did she have any input on it, so the ad is not a coordinated expenditure. But because the friend knows the politician and her strategy, the ad benefits the politician like a coordinated expenditure. Now the law clashes with intuitions. The actual ad has the same corruptive potential as a coordinated ad, but the law classifies it as an independent expenditure that, according to the Supreme Court, does not and cannot corrupt.") ("Consider again the three necessary, logical elements of quid-pro-quo corruption. First, an actor must convey value to a politician (the 'quid'). The value could come in many forms, including a campaign contribution, a briefcase full of cash, or a favor. Second, the politician must convey value to the actor (the 'quo'). This could include a vote on favorable legislation, a helpful call to a regulator, assistance promoting the actor's product, and so forth. Third, a bargain must link the two (the 'pro'). The actor's conveyance must *cause* the politician's conveyance and vice versa. The money buys the vote, and the vote buys the money. . . . To illustrate, consider limits on campaign contributions. They do not impede politicians from conveying value to	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	contributors, and nor do they make it harder for individuals and politicians to bargain. Contribution limits do not address these activities (the quo and the pro) in any way. Instead, they limit the value contributors can convey to politicians. By prohibiting donations beyond a certain size – no big quid – they frustrate corruption. Now consider limits on coordinated expenditures. They do not impede politicians from casting favorable votes, awarding lucrative contracts, making helpful calls, employing supporters' relatives, or promoting products. Nor could they impede most of these activities, as most are fundamental to politician's jobs. The limits do deter politicians from providing direct input on expenditures. However, that involvement is not independently valuable to the makers of those expenditures in the corruption context.") (footnotes omitted). (c) In McConnell v. FEC, 540 U.S. 93, 202-203 (2003), the United States Supreme Court upheld the constitutionality of FECA's coordinated communication rule for electioneering communications: "Buckley's narrow interpretation of the term 'expenditure' was not a constitutional limitation on Congress' power to regulate federal elections. Accordingly, there is no reason why Congress may not treat coordinated disbursements for electioneering communications in the same way it treats all other coordinated expenditures." Id. at 203.	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	(d) The prohibitions on contributions by corporations to candidates, and on in-kind contributions resulting from coordinated communications, remain intact after Citizens United. Accordingly, incorporated Section 501(c)(3) and 501(c)(4) organizations are prohibited from engaging in coordinated communications and making in-kind contributions. (e) When a Section 501(c)(3) or 501(c)(4) organization directs grassroots lobbying to voters in a particular area, and refers to a political party or a clearly identified federal candidate, the organization's discussions with federal candidates regarding the grassroots lobbying can result in coordinated communications. (f) Super PACs that make independent expenditures in support of or in opposition to candidates seek to avoid coordinated communications. When a Super PAC makes a coordinated communication, the communication loses its status as an independent expenditure and becomes an in-kind contribution to one or more candidates. The in-kind contribution is subject to FECA's contribution limitations and source restrictions. 52 U.S.C. §30116(a)(7)(B)(i). See Statement of Facts, United States v. Harber, ¶¶10 & 11.b(ii), Criminal No. 1:14-CR-373 (E.D. Va. Feb. 12, 2015) ("From in or about September 2012 to in or about November 2012, Harber, knowing his course of conduct was	

ACTIVITY	FEDERAL ELECTION CAMPAIGN ACT OF 1971, AS AMENDED ("FECA")	INTERNAL REVENUE CODE OF 1986, AS AMENDED ("I.R.C.")
STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	illegal, nonetheless made and caused $325,000.00 in coordinated expenditures to Political Committee A [a candidate committee] by participating in the purchase of specific advertising by Committee B [an independent expenditure committee] from Vendor Z, which advertising politically opposed Candidate 2 for reelection in the Eleventh Congressional District of the Commonwealth of Virginia, and thus benefitted the challenger, Candidate 1, for whom Harber was simultaneously the Campaign Manager") ("Prior to in or about October 2012, Contributor 1 had made the maximum legal contribution to Political Committee A when Harber, as Campaign Manager for Candidate 1, directed Contributor 1 to Political Committee B to contribute more money, and, in or about October 2012, Contributor 1 became the single largest contributor to Political Committee B by transferring a total of $300,000 to Political Committee B."); U.S. Government Accounting Office, "Campaign Finance: Federal Framework, Agency Roles and Responsibilities, and Perspectives," GAO-20-66R Campaign Finance, at 35 (Feb. 3, 2020) ("DOJ officials have stated that bringing criminal charges for potential coordination between campaigns and independent expenditure-only groups is another challenge. The officials explained that these cases require a cooperating witness who is an insider at the given campaign or Super PAC, for example. The officials stated that those witnesses are often involved in the offense and are therefore unlikely to come	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	forward."); Jerry H. Goldfeder & Myrna Pérez, "Federal Actions Bring Election Matters to the Forefront," New York Law Journal, at 3 (Feb. 27, 2015) ("In the wake of a proliferation of Super PACs, expressly created to assist particular candidates for president or Congress, the prosecution of Harber should act as a warning that the Justice Department is serious about enforcing the strictures of federal campaign finance law. In New York, for example, where there is an unusually high number of attorneys (and clients) who contribute or raise money for a variety of Super PACs, caution should be the watchword and questions ought to be asked. Prospective donors asked to 'bundle' contributions should seek to ascertain the relationship between the Super PAC and the candidate it supports. Among other questions one should ask are: 'Who is making political decisions for the Super PAC?' and 'How is its money being managed and spent?' Especially after Harber, such due diligence is advisable."). See generally Center for Competitive Politics, "Why Did Ted Cruz Supporters Create Four Super PACs?" (April 9, 2015) ("Several news accounts report that four pro-Cruz Super PACs with the names 'Keep the Promise,' 'Keep the Promise I,' 'Keep the Promise II,' and 'Keep the Promise III have pledges for $31 million, a stunning haul for less than a week. . . . Donors almost certainly have different reasons why they might support Ted Cruz. Some may like his economic policies, while others might be attracted to his	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	policies on social issues or foreign affairs. By having different Super PACs, with different bank accounts and different FEC reports, donors could ensure their funds go to support their candidate with messaging in that issue category. . . . Some donors may believe TV ads are inefficient, and might want their money spent for other ways of putting out pro-Cruz messages. Perhaps one or more donors wants to see a Super PAC run Internet and social media ads or organize a pro-Cruz volunteer force. One of the four Super PACs might specialize in new tactics or tactics certain donors would like to support. . . . Another set of donors might be close to a political consultant they think does the best work or the best ads. . . . These donors might want their money to be spent by that consultant. So there could be another Super PAC for that. . . . By having four Super PACs, donors can examine the FEC reports to see if their money was actually spent the way they were promised it would be spent. So this adds a big level of accountability for the donors. . . . The name of the group can help drive the message in the ad, especially for radio ads. All broadcast ads must have a verbal disclaimer with the group name, and radio ads typically require (senselessly, but that is the law) the group name to be spoken three times. The four groups could change their name at any time. So if one of the Super PACs supports a strong national defense policy, it could adopt a name reinforcing that message and help salvage some of the wasted airtime.") (available at	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	http://www.campaignfreedom.org/2015/04/09/the-four-pro-cruz-super-pacs/); Karl Rove, "Super-PAC Strategies for 2016 Success," The Wall Street Journal, March 26, 2015, at A15 ("But having a Super PAC is not the same as having a good one. It must be structured properly. Getting this right is critical because federal law prohibits 'coordination' and private communication between the campaign of an announced candidate and any Super PAC. The two entities must watch each other's actions and public statements to figure out where each of them is going. A well-organized Super PAC will put advocates for the candidate in charge, not consultants. People in whom the candidate and other donors have implicit trust should constitute a volunteer board that oversees the PAC, hires staff, engages vendors, sets compensation, and approves the budget and strategy and material changes in either. Increasingly sophisticated, Super PAC donors pay attention to overhead and consultant compensation. Fundraisers should get a retainer, not a percentage of what they raise: Donors hate paying commissions on their gifts. Fees for vendors doing the group's work should be transparent to donors and set at a reasonable low level to maximize dollars spent on activity. It is also wise to hire someone with sharp political skills to oversee the work of PAC vendors. The consultants doing the message work should not approve their own product. They will always think they have done a great job. Having someone above them to challenge their thinking and push	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	for necessary improvements is critical. Finally, to help avoid scandals, the Super PAC should institute tight financial controls, have its actions reviewed and monitored by knowledgeable legal counsel, and undergo an audit afterward.").	
	(g) An important element of the coordination analysis under the general coordination regulation is the requirement of an expenditure. 11 C.F.R. §109.20(b). Without an expenditure, there is no coordination. A pro-Clinton Super PAC, Correct the Record, has taken the position that the postings on its own website are not expenditures, and therefore it can lawfully coordinate with the Clinton campaign on the postings. It has also taken the position that under Buckley v. Valeo, an expenditure must be for express advocacy, and in the absence of express advocacy, there is no coordination with respect to the expenditure. Furthermore, it will avoid the coordinated communications regulation by not running afoul of the content prong of 11 C.F.R. §109.21(c). The content prong requires a public communication, which does not include communications over the Internet other than communications placed or promoted for a fee on another person's website, digital device, application, or advertising platform. 11 C.F.R. §100.26. See Nicholas Confessore & Eric Lichtblau, "In the 2016 Race, 'Campaigns' Aren't Necessarily Campaigns," The New York Times, May 18, 2015, at A1, A10 ("Supporters of Mrs. Clinton announced the creation last	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	week of a Super PAC, Correct the Record, that would serve as a communications 'war room' and coordinate directly with Mrs. Clinton's campaign. Federal law prohibits a candidate from controlling Super PACs, and such groups cannot coordinate expenditures such as paid advertisements. But Adrienne Watson, a spokeswoman for the Super PAC, said the coordination restriction would not apply because Correct the Record's defense of Mrs. Clinton would be built around material posted on the group's own website, not paid media. Ms. Watson also ventured a further distinction that she said would keep Correct the Record on the right side of the law: The group will collaborate with Mrs. Clinton's campaign, but will not be controlled by it. 'While Correct the Record can legally coordinate with the Clinton campaign, the campaign will not be telling us what to do,' she said."). 46. (a) In FEC v. Christian Coalition, 52 F. Supp. 2d 45 (D.D.C. 1999), the court set forth the elements of a coordinated communication. The Christian Coalition was a not-for-profit corporation that provided a "voice in the public arena for Christians and other 'people of faith.'" 52 F. Supp. 2d at 49. In the 1990, 1992, and 1994 elections, it supported a large number of Republican candidates for federal office. (b) The court held that "[c]oordination requires some to-and-fro between corporation and campaign" with respect to the corporation's electoral activity. 52 F. Supp. 2d at 93.	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	Furthermore, contact between the candidate's campaign and the corporate organization was insufficient, by itself, to show coordination. It was important to allow the organization to discuss issues and policies with a candidate as part of the process of deciding whether the organization would support or oppose the candidate. Accordingly, the court held that coordination required contacts that involved an express request or suggestion from the candidate to the organization, or sufficiently "substantial discussion or negotiation" between the candidate and the organization to make the candidate and the organization "partners or joint venturers." 52 F. Supp. 2d at 92. (c) The discussion or negotiation had to focus on a communication's: (i) contents; (ii) timing; (iii) location, mode, or intended audience (e.g., choice between newspaper or radio advertisement); or (iv) volume (e.g., number of copies of printed materials or frequency of media spots). For example, discussion of which issues to include in a voter guide or scorecard, and how those issues were phrased (e.g., "homosexual rights" versus "human rights") would be coordination. As another example, if an organization's interpretation of the candidate's prior statements or votes would lead it to say the candidate "opposes" the issue, and the candidate tries to persuade the organization to use "supports" on the guide, that is coordination. 52 F. Supp. 2d at 92-93. See also Clifton v. Federal Election Commission, 114 F.3d 1309 (1st Cir. 1998) (FEC regulation	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	impermissibly prohibited any oral communication between a candidate and Maine Right to Life, an organization preparing a voter scorecard listing, rating, and analyzing a legislator's votes). See generally Richard Briffault, "Coordination Reconsidered," 113 Columbia Law Review Sidebar 88 (2013) (available at http://www.columbialawreview.org/coordination-reconsidered_Briffault); Bradley A. Smith, "'Super PACs' and the Role of 'Coordination' in Campaign Finance Law," 50 Willamette Law Review 603 (2013). 47. (a) The FEC's regulations on coordinated communications largely follow the court's holdings in FEC v. Christian Coalition. The regulations consider whether an ad was sponsored at the "request or suggestion" of a candidate or political party; whether a candidate or political party was "materially involved" in the decisions on the content, audience, timing, or media chosen for the ad; and whether the ad was created after "substantial discussion" between the candidate or party and the ad's sponsor. Unlike FEC v. Christian Coalition, the regulations do not require a joint venture, or an agreement or formal collaboration. 11 C.F.R. §109.21(d)(1)-(3). (b) One commentator has criticized the regulations' approach as unrealistic:	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	Candidates and committees don't have to talk to each other; they can communicate through the press. A candidate's committee can publicize campaign messages, themes, and strategies, and reach audiences the candidate's campaign would like to target, without sitting down with representatives of a supportive committee. This might have been a bit more cumbersome in 1999 when Christian Coalition was handed down, but surely today, with candidates, campaigns, parties, and political committees all maintaining websites and Facebook pages, and campaign operatives posting their latest thoughts to their Twitter accounts, direct contacts between campaigns and outside groups are unnecessary: Why do they have to meet when they can tweet? [Richard Briffault, "Coordination Reconsidered," 113 Columbia Law Review Sidebar 88, 94 (2013) (available at http://www.columbialawreview.org/coordination-reconsidered_Briffault)] (c) To be a coordinated communication, the communication must satisfy a three-prong standard: (i) the source of payment for the communication (the "payment prong"); (ii) the content and timing of the communication (the "content prong"); and (iii) the interaction between the person paying for the communication and the candidate, the candidate's campaign committee, the political party, or any agent thereof (the "conduct prong"). 11 C.F.R. §109.21(a).	

ACTIVITY	FEDERAL ELECTION CAMPAIGN ACT OF 1971, AS AMENDED ("FECA")	INTERNAL REVENUE CODE OF 1986, AS AMENDED ("I.R.C.")
STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	(d) Under the payment prong, an individual or entity, other than the candidate, the candidate's campaign committee, or political party, must pay for the communication in whole or in part. 11 C.F.R. §109.21(a)(1). This prong is satisfied when an individual or entity makes expenditures on behalf of a candidate. (e) Under the content prong, the communication must be a public communication, and satisfy one of five alternative tests. 11 C.F.R. §109.21(c). A public communication is a communication by means of any broadcast, cable, or satellite communication, newspaper, magazine, outdoor advertising facility, mass mailing, or telephone bank to the general public, or any other form of general public advertising. A mass mailing is a mailing by United States mail or facsimile of more than 500 pieces of mail of an identical or substantially similar nature within any thirty day period. A telephone bank is more than 500 telephone calls of an identical or substantially similar nature within any thirty day period. General public political advertising does not include communications over the Internet, except for communications placed or promoted for a fee on another person's website, digital device, application, or advertising platform. The placement of advertising for a fee means all potential forms of advertising, such as banner advertisements, streaming video, pop-up advertisements, and directed search results. General public advertising also	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	does not include communications between a corporation and its restricted class. 52 U.S.C. §30101(22)-(24) (formerly 2 U.S.C. §431(22)-(24)); 11 C.F.R. §§100.26 to 100.28; Preamble to Final Rules of Federal Election Commission on Internet Communications, 71 F.R. 18,589, 18,594 (April 12, 2006); MUR 6522 (Lisa Wilson-Foley for Congress) (coordinated communications do not result from Internet communications that are not placed for a fee on another person's website; candidate did not make coordinated communications with three of her businesses through online advertising with YouTube videos, Facebook posts on the business' page promoting the business, and the candidate's and campaign committee's appearance on the business' websites; all the posts were for free and none of the Internet advertising was placed for a fee on another person's website); MUR 6477 (Super PAC Turn Right USA) (content prong does not apply to videos placed for free on the Internet); MUR 6414 (Russ Carnahan in Congress) (content prong does not apply to advertisement on website). (f) In FEC Advisory Opinion 2022-20, the FEC opined that short code text messages containing links to split-it fundraising pages on ActBlue.com did not satisfy the content prong. The text messages were not an electioneering communication or a public communication, and therefore were not in-kind contributions to the federal political committees listed on the split-it fundraising pages. Maggie for NH, the principal campaign committee of	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	Maggie Hassan, U.S. Senator from New Hampshire and candidate for re-election in 2022, maintained a short-code texting program to send text messages to its supporters on topics relevant to the campaign and solicit contributions. Maggie for NH sent text messages only to individuals who have affirmatively opted in to receive them, either by texting a keyword to the committee's short code number, or by providing their cell phone numbers to the committee through a form or webpage. Maggie for NH paid both per-message and flat fees to operate its short code program. Maggie for NH used its text messaging program to text links to its split-it fundraising pages on ActBlue.com. ActBlue's split-it pages allowed users to make contributions to multiple federal political committees simultaneously. The FEC first found that since the text messages are not broadcast, cable, or satellite communications, they are not electioneering communications. The FEC then found that the text messages are not a form of general public political advertising and therefore not a public communication. General public political advertising typically requires the person making the communication to pay to use a third-party's platform to gain access to the third-party's audience. For example, a political committee pays a fee to place a communication on a third-party's website to reach the website's users. Many of these people may have little to no interest in receiving the communication and do so only because they wish to use the third-party's website. In	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	contrast, supporters of Maggie for NH who elect to receive information from Maggie for NH must affirmatively opt-in to receive short code text messages. Participants in the committee's short code program have sought out the speaker and speech through a forum controlled by the speaker, i.e., the short code number the committee leases. This contrasts with traditional forms of paid advertising in which a speaker pays to disseminate a message through a medium controlled and to an audience established by a third-party. Thus, the text messages sent to subscribers as part of Maggie for NH's text message program are similar to speech disseminated through a political committee's own website, which the FEC has found is not a public communication. Internet Communications, 71 F.R. 18,589, 18,598 (April 12, 2006) ("[A] political party committee's Web site cannot be a form of 'public communication' any more than a Web site of an individual can be a form of 'public communication.' In each case, the Web site is controlled by the speaker, the content is viewed by an audience that sought it out, and the speaker is not required to pay a fee to place a message on a Web site controlled by another person."). (g) In FEC Advisory Opinion 2024-1, the FEC opined that door-to-door canvassing paid for by Texas Majority PAC, a Texas general–purpose committee and state Super PAC, and the accompanying script and printed literature, are not a form of general public political advertising and therefore not a public communication under 52 U.S.C. §30101(22) and 11	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	C.F.R. §100.26. As a result, the costs of the compensation of the canvassers, scripts, and literature are not coordinated expenditures regardless of whether the sponsoring organization or canvassing vendor is privy to nonpublic federal candidate or party strategies and needs, coordinates with the candidate or party, or engages in express advocacy as part of the canvassing. In addition, these costs are not treated as an in-kind contribution to the candidate or party under 11 C.F.R. §109.20. (i) Political advertising under the definition of public communication involves paying a vendor or platform, such as a television broadcaster, newspaper, or ad network, to gain access to the platform's audience. The canvassing activity will not be disseminated through a medium controlled by, or to an audience established by, a third-party. (ii) Unlike a newspaper or television company, the canvassing vendors will have no preexisting relationship with the canvass's audience and will have no more right to communicate with the audience than the candidate or party committee that retained them. In addition, the vendors will not establish or identify the audience for the canvassing program, but the committee will preselect the voters whose homes will be visited. As a result, the vendors will act as the committee's agents in carrying out a canvassing program controlled by the committee.	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	(iii) Furthermore, door-to-door canvassing is a traditional grassroots activity fundamentally different from the types of mass media described in the statutory definition of public communication. Unlike communications made via television, newspapers, magazines, mass mailings, or telephone banks, door-to-door canvassing involves individual people talking face-to-face with voters. (iv) Although the canvassing activity is not a coordinated expenditure, the transfer to a campaign or party committee of any data that results from the canvassing activity would be an in-kind contribution. Accordingly, the data is subject to FECA's amount and source limitations, and can only be transferred at fair market value rates. (v) Since the FEC advisory opinion involves a state Super PAC, its implication is that other sponsors of coordinated canvassing activity can engage in this activity without triggering the coordinated expenditure rules. As a result, individuals and PACs can engage in coordinated canvassing activity without being subject to FECA's contribution amount and source limitations. For-profit corporations, not-for-profit corporations, unions, Section 501(c)(4) organizations, nonfederal Section 527 organizations, and state PACs (subject to state law) can do so without being subject to FECA's prohibition on contributions and the	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	"paid for by" disclaimer requirements (unless a state PAC must include a disclaimer under state law). (vi) When a federal PAC, whether a connected PAC, nonconnected PAC, or a Super PAC, engages in coordinated canvassing, it must report its spending to the FEC on its regularly scheduled reports, and only as an operating expenditure. In addition, the scripts and literature must contain the "paid for by" disclaimers that apply to coordinated communications. (vii) For Section 501(c) tax-exempt organizations that engage in coordinated canvassing, the expenditures made by the organization for the costs of the canvassing can trigger a 21% tax on the lesser of the expenditures and the organization's net investment income. The organization should determine whether it should use a separate segregated political account for coordinated canvassing to avoid this tax. I.R.C. §527(f). See discussion of this tax in Paragraphs 28 to 30 of the I.R.C. column for "Regulatory Provisions on Contributions, Expenditures, and Electioneering." (viii) To come within the exemption from coordinated expenditures, the canvassing activity must satisfy the following requirements:	

ACTIVITY	FEDERAL ELECTION CAMPAIGN ACT OF 1971, AS AMENDED ("FECA")	INTERNAL REVENUE CODE OF 1986, AS AMENDED ("I.R.C.")
STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	(A) The sponsoring organization or its vendors recruit, employ, train, and direct the canvassers; (B) Either the sponsoring organization or its vendors design and produce the canvassing materials, i.e., the scripts and literature, such as door hangers; (C) If the sponsoring organization retains a vendor, the sponsoring organization and not the vendor determines the audience and what doors to knock on; and (D) The canvassing materials do not include the candidate's own materials and literature. (ix) The FEC advisory opinion does not apply to voter outreach efforts that are not door-to-door canvassing, such as broadcast and satellite communications, digital advertising, direct mail, phone banks, and rides to the polls. These activities continue to be subject to the coordination expenditure rules. (x) The FEC advisory opinion also does not apply to door-to-door canvassing conducted as independent expenditures that contain express advocacy for the election or defeat of a clearly identified candidate. These expenditures occur when the sponsoring organization is not privy to the candidate's strategies and needs. The independent expenditures are subject to FECA's reporting and disclaimer requirements. If	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	the canvassing does not contain express advocacy, but otherwise references a candidate or party, it will not be an independent expenditure. A federal PAC must report the nonindependent expenditures to the FEC on its regularly scheduled reports, and only as an operating expenditure. For Section 501(c) tax-exempt organizations, the nonindependent expenditures can trigger the tax discussed in subparagraph (vii) above. (xi) When the sponsoring organization conducts coordinated door-to-door canvassing activities and also makes independent expenditures for paid advertising for public communications, such as for digital advertising, TV ads, direct mail, and phone banks, the organization should establish firewalls between the two activities. In this manner, the organization can avoid coordination. (xii) Organizations that wish to canvass in support of both federal and state candidates should determine whether state law requires independence from state candidates or parties, and whether they can avoid coordination under state law while coordinating with a federal candidate or party. See also Isaac Arnsdorf & Josh Dawsey, "Trump Team Gambles on New Ground Game Capitalizing on Loosened Rules," The Washington Post (Aug. 3, 2024) ("Republican presidential nominee Donald Trump is relying on a cluster of loosely coordinated outside groups to run turnout	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	operations traditionally performed by the campaign itself, an approach that takes advantage of new leniencies in campaign finance rules but comes with the risk of untested outfits duplicating efforts or working at cross purposes. With fewer than 100 days before the election, local GOP officials in battleground states have raised alarms about the scant presence of Trump campaign field staff. For the large armies of paid and volunteer door-knockers and canvassers who typically drive turnout in presidential elections, the campaign is largely relying on outside groups such as America First Works, America PAC and Turning Point Action. . . . In March, the Federal Election Commission issued new guidance that opened the door for campaigns and outside groups to collaborate on turnout efforts. In the past, campaigns and official party committees, which are subject to contribution limits, generally observed a firewall that blocked information-sharing with super-PACs and nonprofits that accept unlimited contributions. Now, campaigns and outside groups are free to share messaging and exchange data. That new opportunity has allowed the Trump campaign to supplement a bare-bones field program with allied programs fueled by megadonors.") (available at https://www.washingtonpost.com/politics/2024/08/03/trump-allies-ground-game/). Theodore Schleifer, "Trump Gambles on Outside Groups to Finance Voter Outreach Efforts," The New York Times (Aug. 14, 2024) ("The Republican campaign for president is	

ACTIVITY	FEDERAL ELECTION CAMPAIGN ACT OF 1971, AS AMENDED ("FECA")	INTERNAL REVENUE CODE OF 1986, AS AMENDED ("I.R.C.")
STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	quietly being remade by new federal guidelines that empower big-money groups and threaten to undermine party control well beyond the 2024 election. Former Present Donald J. Trump's team has enlisted some of these groups to spend hundreds of millions of dollars to knock on hundreds of thousands of doors across the country − saving the campaign significant money in the process. But the Trump campaign is making a serious gamble in doing so, betting that these outside groups, which they do not directly control, can carry out their marching orders without accountability. . . . For all the cost savings, the risks of such coordination, veterans of Republican campaigns say, are plentiful. There are opportunities for miscommunication. There is a branding issue: Voters in battleground states likely have heard of their state Republican Party, but probably not a national super PAC started mere weeks ago. And many super PACs have never organized a canvassing operation at a scale like this, while Republican Party officials and activists have honed their practice over many election cycles.") (available at https://www.nytimes.com/2024/08/14/us/politics/trump-voter-outreach-super-pacs.html). (h) The five alternative content tests are: (i) the public communication is an electioneering communication under 11 C.F.R. §100.29, which is a broadcast communication that mentions a federal candidate	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	and is distributed to the applicable electorate thirty days before the primary election, or sixty days before the general election. 11 C.F.R. §109.21(c)(1); see also FEC Advisory Opinion 2017-10 (independent expenditure-only political committee developed a Contract for American Renewal (the "Contract") that contained a list of issues on which candidates would commit to take legislative action if elected, and which it would make available for candidates to sign; committee proposed to include signed Contracts in e-mails to potential or current supporters, or to place them on the committee's website and to encourage voters via e-mail and social media to pledge support to the candidates that signed them; committee will not discuss with a candidate whether or how it will spend money, or whether it will set up additional political committees; committee may run advertisements in support of or in opposition to a candidate, but it has no current plans to communicate with any candidate about any advertisements that it may run, or other communications that it may make; upon signing a contract with a candidate, the committee will cease all communication with that candidate; FEC opined that committee's proposal did not satisfy the content prong since it was neither a public communication nor an electioneering communication); (ii) the public communication republishes, disseminates, or distributes in whole or in part at any time campaign	

ACTIVITY	FEDERAL ELECTION CAMPAIGN ACT OF 1971, AS AMENDED ("FECA")	INTERNAL REVENUE CODE OF 1986, AS AMENDED ("I.R.C.")
STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	materials prepared by a candidate or the candidate's campaign committee. 11 C.F.R. §109.21(c)(2); (iii) the public communication expressly advocates the election or defeat of a clearly identified federal candidate at any time. 11 C.F.R. §109.21(c)(3); (iv) the public communication is the functional equivalent of express advocacy. A communication is the functional equivalent of express advocacy if it is "susceptible of no reasonable interpretation other than as an appeal to vote for or against a clearly identified federal candidate." 11 C.F.R. §109.21(c)(5); or (v) (A) the public communication is made within ninety days before an election, and (I) refers to a clearly identified House or Senate candidate, and is publicly distributed in that candidate's jurisdiction; (II) refers to a political party, is coordinated with a House or Senate candidate, and is publicly distributed in that candidate's jurisdiction; or (III) refers to a political party, is coordinated with a political party, and is publicly distributed during a midterm election cycle; or (B) the public communication is made 120 days before a Presidential primary election through the general election, and (I) refers to a clearly identified Presidential or Vice Presidential candidate, and is publicly distributed in a jurisdiction before the clearly identified federal candidate's election in that jurisdiction; (II) refers to a party, is	

ACTIVITY	FEDERAL ELECTION CAMPAIGN ACT OF 1971, AS AMENDED ("FECA")	INTERNAL REVENUE CODE OF 1986, AS AMENDED ("I.R.C.")
STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	coordinated with a Presidential or Vice Presidential candidate, and is publicly distributed in that candidate's jurisdiction; or (III) refers to a political party, is coordinated with a political party, and is publicly distributed during the Presidential election cycle. 11 C.F.R. §109.21(c)(4). (vi) Under the content prong, communications that do not contain express advocacy, and are published outside the preelection windows, are not coordinated communications treated as in-kind contributions. As a result, they are not limited in amount. (i) The conduct prong has the following five alternative tests: (i) the communication is created, produced, or distributed at the request or suggestion of the candidate, the candidate's committee, political party committee, or any of their agents; or the communication is created, produced, or distributed at the suggestion of the person paying for the communication, and the candidate, the candidate's committee, political party committee, or any of their agents assents to the suggestion. 11 C.F.R. §109.21(d)(1). For example, this prong is satisfied when a Section 501(c)(4) organization airs a television or radio ad at the request or suggestion of a candidate. As another example, a Section 501(c)(4) organization advises a campaign about a	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	proposed communication, and the campaign signals its assent to the communication. See also MUR 6668 (Jay Chen for Congress) (brother of candidate organized a Super PAC's mailers in support of candidate; Commission found that a familial relationship, by itself, is insufficient to trigger an investigation into coordination; use of a printer as a common vendor did not change the analysis when the printer only printed addresses onto the mailers and applied its bulk mail postmark); MUR 6368 (Friends of Roy Blount), Statement of Chair Ellen L. Weintraub and Commissioners Cynthia L. Bauerly and Steven T. Walther (Commission could not reach a decision and dismissed the MUR; founder of a Section 501(c)(4) organization appeared in a candidate's advertisement and campaigned with the candidate, but the complainant did not have any direct evidence that the founder had any nonpublic information provided by the campaign that tainted the independence of the Section 501(c)(4) organization's expenditures). (ii) the candidate, the candidate's committee, or political party committee is materially involved in decisions regarding the content, intended audience, means or mode of the communication, specific media outlet used, the timing or frequency or size or prominence of a communication. 11 C.F.R. §109.21(d)(2); (iii) the communication is created, produced, or distributed after one or more substantial discussions about the	

ACTIVITY	FEDERAL ELECTION CAMPAIGN ACT OF 1971, AS AMENDED ("FECA")	INTERNAL REVENUE CODE OF 1986, AS AMENDED ("I.R.C.")
STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	communication between the person paying for the communication or the employees or agents of that person and the candidate, the candidate's committee, the candidate's opponent or opponent's committee, a political party committee, or any of their agents. A discussion is substantial if information about the candidate's or political party committee's campaign plans, projects, activities, or needs is conveyed to a person paying for the communication, and that information is material to the creation, production, or distribution of the communication. 11 C.F.R. §109.21(d)(3); (iv) the person paying for the communication employs a common vendor to create, produce, or distribute the communication, and the vendor: (A) is currently providing services or provided services within the previous 120 days to the candidate or party committee that puts the vendor in a position to acquire information about the campaign plans, projects, activities, or needs of the candidate or political party committee; and (B) uses or conveys information about the plans or needs of the candidate or political party, or information previously used by the vendor in serving the candidate or party, and that information is material to the creation, production, or distribution of the communication. 11 C.F.R. §109.21(d)(4); or (v) a person who has previously been an employee or independent contractor of a candidate's campaign	

ACTIVITY	FEDERAL ELECTION CAMPAIGN ACT OF 1971, AS AMENDED ("FECA")	INTERNAL REVENUE CODE OF 1986, AS AMENDED ("I.R.C.")
STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	committee or a political party committee during the previous 120 days uses or conveys information about the plans or needs of the candidate or political party committee to the person paying for the communication, and that information is material to the creation, production, or distribution of the communication. 11 C.F.R. §109.21(d)(5). (j) The former employee conduct standard does not implicate the state of mind of the person paying for the communication, the employee, or the former employer. (i) Accordingly, for an employee who uses or conveys information acquired in the former employment, the coordination analysis does not turn on whether the new employer: (A) does not have any intention of coordinating with the former employer; (B) does not have any knowledge of the employee's intention to coordinate or act on behalf of or as a conduit for the former employer; or (C) takes reasonable precautions against making coordinated expenditures. FEC Advisory Opinion 2016-21. (ii) The former employee conduct standard does not require that the former employee act under the continuing direction or control of, at the behest of, or on behalf of, his or her former employer. The standard applies in situations in which the former employee assumes the role of a conduit of information, and in situations in which the former employee makes use of the information but does not share it with the	

ACTIVITY	FEDERAL ELECTION CAMPAIGN ACT OF 1971, AS AMENDED ("FECA")	INTERNAL REVENUE CODE OF 1986, AS AMENDED ("I.R.C.")
STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	person who is paying for the communication. Coordinated and Independent Expenditures, 68 F.R. 421, 438-39 (Jan. 3, 2003). The standard applies even when there is no interaction between the payor and the candidate or political party, thereby preventing circumvention of the coordination regulation through employees. FEC Advisory Opinion 2016-21. (iii) The former employee conduct standard applies regardless of whether the employer expressly instructs its employees not to use or convey information obtained from a prior employer, and the employee nonetheless does so based solely on the employee's unilateral decision. FEC Advisory Opinion 2016-21. (iv) Terminating an employee whose conduct satisfied the conduct prong would not make subsequent communications independent. For example, a phone bank would be considered a coordinated communication if the information that the employee used or conveyed was material to the phone bank's creation, production, or distribution. Terminating the employee would not change the use or conveyance of the information or its materiality to the employer's decisions relating to the phone bank. FEC Advisory Opinion 2016-21. (v) The former employee conduct standard requires that the information used or conveyed be material to the creation,	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	production, or distribution of the communication. It is unlikely that when a phone bank employee uses information acquired from a prior employer, including technical training in phone or software systems, or communication techniques, in a conversation with a potential voter, the information will be material to the phone bank's creation, production, or distribution. FEC Advisory Opinion 2016-21. (k) A candidate's or political committee's response to an inquiry about that candidate's or party's positions on legislative or policy issues, which does not include discussion of campaign plans, projects, activities or needs, does not satisfy any of the conduct tests. 11 C.F.R. §109.21(f). This safe harbor permits organizations to make inquiries regarding a candidate's positions on policy issues and legislation. Organizations rely on this safe harbor in preparing voter guides and lobbying campaigns. (l) Persons may use publicly available information in creating, producing or distributing a communication, and this use does not, by itself, satisfy four of the five conduct tests. To qualify for the safe harbor, the person paying for the communication must show that the information used in creating, producing, or distributing the communication was obtained from a publicly available source. Importantly, this safe harbor does not apply to the "request or suggestion"	

ACTIVITY	FEDERAL ELECTION CAMPAIGN ACT OF 1971, AS AMENDED ("FECA")	INTERNAL REVENUE CODE OF 1986, AS AMENDED ("I.R.C.")
STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	conduct test. 11 C.F.R. §109.21(d)(2), (3), (4)(iii), and (5)(ii). (i) Publicly available sources include: (A) candidate speeches or interviews; (B) materials on a candidate's website or other publicly available website; (C) newspaper or magazine articles; (D) press releases; (E) a television station's public inspection file; and (F) transcripts from television shows. Coordinated Communications, 71 F.R. 33,190, 33,205 (June 9, 2006). The common element in these publicly available sources is that they can all be viewed or accessed in their entirety by the general public, and not only by the persons to whom they are targeted. FEC Advisory Opinion 2016-21. (ii) Unless the general public has a way of obtaining or viewing the geographic areas in which a former employee of a candidate or political party previously engaged in voter outreach efforts, any information that the employee conveys to a nonconnected hybrid political committee about the geographic targeting would not be obtained from a publicly available source. FEC Advisory Opinion 2016-21. (iii) A discussion between the political director of a Super PAC and a candidate regarding whether an advertisement on the candidate's position on immigration reform would be effective is coordination, but if the political director uses information from a news story, there is no coordination.	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	(iv) One commentator cogently argues that the practice of redboxing does not come under the exception for publicly available sources because redboxing satisfies the "request or suggestion" conduct test. As a result, redboxing is a coordinated communication and an in-kind contribution by a Super PAC to a candidate committee subject to the source and amount restrictions on contributions to candidate committees and the disclosure requirements for these contributions. Kaveri Sharma, "Voters Need to Know: Assessing the Legality of Redboxing in Federal Elections," 130 Yale Law Journal 1898 (May 2021). (v) Redboxing entails posting a message concerning a candidate or his or her opponent, and a visual cue that tips off a Super PAC that the message is intended for use in an advertisement by the Super PAC. The latter element acts as a magic signal for a particular message on a public campaign website and functions as an attempt to request an advertisement from a Super PAC. As such, redboxes are a carefully curated communication tool designed to instruct Super PACs on the candidate's preferences for advertising content, desired audience, timing, and other strategic information. 103 Yale Law Journal at 1927. (vi) The language of the FEC regulation that the "communication is created, produced, or distributed at the request or suggestion of the candidate, the candidate's committee, political party committee, or any of their agents"	

ACTIVITY	FEDERAL ELECTION CAMPAIGN ACT OF 1971, AS AMENDED ("FECA")	INTERNAL REVENUE CODE OF 1986, AS AMENDED ("I.R.C.")
STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	warrants a broad reading. In McConnell v. Federal Election Commission, the Court rejected a challenge to the statutory definition of coordination as unconstitutionally vague. The statute provides that coordination occurs when a communication "is made by any person in cooperation, consultation, or concert, with, or at the request or suggestion of," a candidate, a candidate's authorized committee, a political party committee, or their agents. 52 U.S.C. §30116(a)(7)(B)(i). The Court held that this language delineates its reach in words of common understanding; a request or suggestion need not be explicit and a wink or nod can suffice. McConnell v. Federal Election Commission, 540 U.S. 93, 221-22 (2003), overruled on other grounds by Citizens United v. Federal Election Commission, 558 U.S. 310 (2010). (vii) This commentator explains how redboxing satisfies the request or suggestion requirement: Redboxes are the internet's version of a wink or a nod. Candidates and party committees who post redboxes "request" or, at the very least, "suggest" that an outside group create an advertisement. Industry players admit to being able to recognize that the "magic signals" indicate a request or suggestion to communicate the message alongside the signals. These signals – the colored box, the phrase "voters need to know," back-up or production elements, employing a dedicated microsite, and targeting information	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	– are standardized across campaigns, and the more "magic signals" that are present, the more confident an independent spender can be that the candidate or party is making a request. When interpreted together, they become more than a coincidence but, instead, a clearly communicated signal to eagerly awaiting independent groups. [130 Yale Law Journal at 1930 (footnotes omitted)] (viii) Finally, this commentator addresses the argument that under the FEC rulemaking on coordinated communications, 68 F.R. 421, 432 (Jan. 3, 2003), redboxes are permissible because the requests or suggestions must be made to a select audience, rather than to the public generally: However, a redbox is not a generalized request – it communicates to a specific audience. The average voter does not know that the "magic signals" exist or how to interpret their subtle call to action. Similarly, these voters would have no use for the targeting information, B-roll footage or back-up documents that can validate claims and protect a PAC from legal exposure, or all of the other information that these redboxes communicate. Instead, identifying coded redbox requests requires inside knowledge that certain signals are posted to convey a request or suggestion. [130 Yale Law Journal at 1930-31 (footnotes omitted)]	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	But see FEC v. Christian Coalition, 52 F. Supp. 2d 45, 95 (D.D.C. 1999) (the fact that the Christian Coalition was singing from the same page on certain issues as the George H. W. Bush campaign does not by itself establish coordination); MUR 7700 (VoteVets and Rick Hegdahl), Statement of Reasons of Chairman Allen J. Dickerson, Commissioner Sean J. Cooksey, Commissioner James E. "Trey" Trainor & Commissioner Ellen L. Weintraub (complaint alleged that a tweet by a senior official of the principal campaign committee of 2020 presidential candidate Pete Buttigieg was a request or suggestion that led to later television advertisements in Nevada by the multicandidate, hybrid political committee VoteVets under the conduct prong of the coordination regulations; "[T]he request or suggestion standard is meant to cover requests to select audiences, not statements to the general public. And there are few more public ways for a campaign to communicate than by campaign officials putting out statements on Twitter"); MUR 7124 (Katie McGinty for Senate) (FEC dismissed a complaint when an authorized committee published a "Notice" page on its public website that contained a list of messages about the candidate and her opponents, specified who needed to know them, e.g., voters in Philadelphia, and provided a general sense of timing of at this point of the campaign); MUR 6821 (Shaheen for Senate) (FEC dismissed complaint when an authorized committee posted a message and related documents on its	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	public website with information on the candidate and allegations about her opponent that allegedly led to an outside group to distribute a television advertisement based on the posted message). See generally Gabriel Foy-Sutherland & Saurav Ghosh, "Coordination in Plain Sight: The Breadth and Uses of 'Redboxing' in Congressional Elections," 23 Election Law Journal 149, 154 (2024) ("[R]edboxing can theoretically mobilize a well-funded outside spending group to keep a candidate electorally competitive while their campaign gathers steam, permit the candidate to redirect resources to other valuable campaign activities, or supplement a candidate's own spending with political advertising that delivers the precise messaging the campaign anticipates will be most appealing to voters. Additionally, since they are nominally independent of the candidate, outside spending groups are well positioned to carry a negative or inflammatory message about the candidate's electoral opponent while avoiding the costs that such a message might impose on a candidate or party. As political scientists have established, negative campaigning can be highly effective in the sense of hurting voter evaluations of political opponents, yet is also corrosive to the messenger, decreasing evaluations of the very candidate making the attacks. The solution that 'independent' groups such as super PACs and 501(c)(4)s offer is to convey the negative message while removing the need for the candidate to serve as the	

ACTIVITY	FEDERAL ELECTION CAMPAIGN ACT OF 1971, AS AMENDED ("FECA")	INTERNAL REVENUE CODE OF 1986, AS AMENDED ("I.R.C.")
STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	messenger. By using redboxing to delegate negative campaign messages to an external, 'independent' group, candidates can reap the benefits of attack ads with little to no blow-back from voters.") (footnote omitted) (available at https://www.liebertpub.com/doi/epub/10.1089/elj.2003.0038). Michael D. Gilbert & Brian Barnes, "The Coordination Fallacy," 43 Florida State University Law Review 399, 414 (Winter 2016) ("The rules permit outsiders to use any inside information that politicians make public. They can listen to candidates' speeches, check their websites, read their Facebook posts, follow their Tweets, or use statements, strategies, images, or videos that politicians make publicly available. This means outsiders can, without coordinating, get much of the information they need to make their expenditures effective.") (footnotes omitted); Richard L. Hasen, "Super PAC Contributions, Corruption, and the Proxy War Over Coordination," 9 Duke Journal of Constitutional Law & Public Policy 1, 16, 18 (2014) ("A coordination rule which does not require explicit interactions appears to violate the First Amendment. . . . But actual coordination is unnecessary to achieve the aims of supporting a candidate and there is no need for those with a personal relationship to a candidate to risk a felony. The information that a Super PAC needs to be an effective proxy for a campaign is all public, and nothing depends on the personal relationship."); Marc E. Klepner, "When 'Testing	

ACTIVITY	FEDERAL ELECTION CAMPAIGN ACT OF 1971, AS AMENDED ("FECA")	INTERNAL REVENUE CODE OF 1986, AS AMENDED ("I.R.C.")
STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	the Waters' Tests the Limits of Coordination Restrictions: Revising FEC Regulations to Limit Pre-Candidacy Coordination," 84 Fordham Law Review 1691(March 2016). Jeff Coltin, "Andrew Cuomo is whispering to his super PAC," Politico (April 28, 2025) ("Cuomo is not the only mayoral candidate this year hoping to guide a super PAC - in his case, a group called Fix the City has raised more than $6.2 million in less than two months, led by donors in the real estate and finance industries. It's run by Steve Cohen, a former top aide to Cuomo, and has already reported spending $1.9 million on ads highlighting his record. . . . But one political operative who works for super PACs said every candidate 'who has half a brain' knows that the tactic of redboxing helps. 'The best way to get messaging out to an IE is to make a website, put pictures, put videos, and we will find it,' said the operative, who was granted anonymity to speak freely.") (available at https://www.politico.com/news/2025/04/28/andrew-cuomo-super-pac-00314509). Shane Goldmacher, "The Little Red Boxes Making a Mockery of Campaign Finance Laws," The New York Times (May 16, 2022) ("From Oregon to Texas, North Carolina to Pennsylvania, Democratic candidates nationwide are using such red boxes to pioneer new frontiers in soliciting and directing money from friendly super PACs	

ACTIVITY	FEDERAL ELECTION CAMPAIGN ACT OF 1971, AS AMENDED ("FECA")	INTERNAL REVENUE CODE OF 1986, AS AMENDED ("I.R.C.")
STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	financed by multimillionaires, billionaires and special-interest groups. Campaign watchdogs complain that the practice further blurs the lines meant to keep big-money interests from influencing people running for office, effectively evading the strict donation limits imposed on federal candidates. And while the tactic is not new to 2022, it is becoming so widespread that a New York Times survey of candidate websites found at least 19 Democrats deploying some version of a red box in four of the states holding contested congressional primaries on Tuesday.") (available at https://www.nytimes.com/2022/05/16/us/politics/red-boxes-campaign-finance-democrats.html). Alex Isenstadt, "A Mole Hunt, a Secret Website and Peter Thiel's Big Risk: :How J.D. Vance Won His Primary," Politico (May 3, 2022) ("Tech billionaire Peter Thiel had already donated a record breaking . . . $15 million in total to bolster [J.D.] Vance − the largest amount ever given to boost a single Senate candidate. . . Vance was a first-time candidate, and he lacked a donor base able to keep up on the fundraising front with his rivals, some of whom poured millions of dollars from personal fortunes into their campaign accounts. The disparity showed in the campaigns: Vance had a bare-bones team, with only one communications staffer. As the primary got underway, the super PAC took on the responsibilities typically overseen by campaigns: It built out an extensive data operation, sent out messages to supporters encouraging them to attend Vance's	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	events, and hosted tele-town hall events the candidate participated in.") (available at https://www.politico.com/news/2022/05/03/jd-vance-win-ohio-primary-00029881). (ix) The Philadelphia Board of Ethics addresses redboxing in its Campaign Finance Regulations. Under the Regulations, a coordinated expenditure occurs when the person making the expenditure does so based on instructions received from the campaign. A public communication by a campaign will constitute such instruction only if: (A) the communication includes a suggestion that the electorate or segment thereof be made aware of information identified in the communication; and (B) the communication suggests the manner in which the information should be presented, for example, if the communication includes a phrase such as "voters need to hear" or "voters need to see." Despite the presence of these factors. coordination will not be found if the person can demonstrate that they had an independent basis for making the expenditure. Philadelphia Board of Ethics, Regulation No. 1, Campaign Finance, Subpart I. Coordinated Expenditures, Paragraph 1.33(g), at 19-20. (x) Example 1 for Paragraph 1.33(g) provides: Candidate A's campaign website includes a page with text in a red box that says "Voters in South Philadelphia need to hear that Candidate A supports doge parks." Without any	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	other input from the campaign, Philadelphians for Philadelphia PAC pays $25,000 for a sound track to drive through South Philadelphia playing a recording praising Candidate A for his support of dog parks. The $25,000 spent by Philadelphians for Philadelphia PAC is a coordinated expenditure with Candidate A's campaign because Philadelphians for Philadelphia PAC made the expenditure based on instructions from the campaign. As such, the $25,000 spent is both an excess in-kind contribution made by the PAC and an excess in-kind contribution received by Candidate A's campaign. (xi) Example 2 for Paragraph 1.33(g) provides: Candidate A's communications director tweets that "Center City voters need to see on the go that Candidate A will keep our streets clean." Without any other input from Candidate A's campaign, Philadelphians for Philadelphia PAC spends $200,000 to send online advertisements to mobile devices in Center City with the message "Candidate A will keep our streets clean." The $200,000 spent by Philadelphians for Philadelphia is a coordinated expenditure with Candidate A's campaign because Philadelphians for Philadelphia PAC made the expenditure based on instructions from the campaign. As such, the $200,000 spent is both an excess in-kind	

ACTIVITY	FEDERAL ELECTION CAMPAIGN ACT OF 1971, AS AMENDED ("FECA")	INTERNAL REVENUE CODE OF 1986, AS AMENDED ("I.R.C.")
STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	contribution made by the PAC and an excess in-kind contribution received by Candidate A's campaign. (xii) Example 3 for Paragraph 1.33(g) provides: Philadelphians for Philadelphia PAC spends $15,000 to purchase a series of full-page newspaper advertisements saying Candidate A is the only candidate who will rid Philadelphia of spotted lantern flies . Shortly before the ads begin to appear in the newspaper, Candidate A's campaign updates its website with the message, "Philadelphia voters need to read that Candidate A will rid our city of spotted lantern flies!" After the first ad is published, Board Staff contacts Philadelphians for Philadelphia PAC about the appearance of a coordinated expenditure. In response, Philadelphians for Philadelphia PAC provides a newspaper article from a month earlier in which Candidate A is quoted as saying "Only I can kill every spotted lantern fly." The PAC also shares invoices for the ads showing that the PAC paid for them before Candidate A's campaign updated its website with the statement about the lantern flies. The $15,000 Philadelphians for Philadelphia PAC spent was not a coordinated expenditure because the PAC had a basis for the information in its advertisements that was independent of the information Candidate A's campaign posted on its website.	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	(xii) The New York City Campaign Finance Board has adopted a regulation that disfavors redboxing. The Board considers it a fundamental breach of a candidate's certification to have coordination in alleged independent expenditures, whereby material or activity that directly or indirectly assists or benefits a candidate's nomination or election, which is purported to be paid by independent expenditures, was in fact authorized, requested, suggested, fostered, or cooperated in by the candidate. New York City Campaign Finance Board Rules, Chapter 3: Eligibility to Receive Public Funds, §3-01(e)(i)(E). See also Emma G. Fitzsimmons & Nicholas Fandos, "Cuomo Loses $622,000 Over Concerns of Improper Super PAC Coordination," The New York Times (May 12, 2025) ("Former Gov. Andrew M. Cuomo was denied more than $600,000 in public matching funds on Monday after the New York City Campaign Finance Board found that he most likely engaged in illicit coordination with a super PAC supporting his campaign for mayor. Mr. Cuomo first aroused suspicion when he posted on his campaign website what looked to be a set of detailed spending instructions for anyone hoping to help. The super PAC, Fix the City, began airing an ad just days later that appeared to align with some of those requests, echoing themes and data points. The tactic in question, known as red-boxing because of the frequent use of red-bordered boxes to highlight the	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	instructions, has become common in federal races as a way to circumvent anti-coordination rules in plain sight. But the New York City Campaign Finance Board has explicitly warned against it. Mr. Cuomo still received $1.5 million in public matching funds. He had theoretically qualified for $2.1 million, but the board decided to withhold $622,056 – the amount that the super PAC paid for the ad – because it said there was 'reason to believe' that the television commercial was 'not independent of the Cuomo campaign.'") (available at https://www.nytimes.com/2025/05/12/nyregion/cuomo-denied-matching-funds-html). (m) When a commercial vendor, former employee, or political committee uses a safe harbor firewall to prevent the sharing of information about a candidate or political party's plans, projects, activities, or needs, the conduct tests of 11 C.F.R. §109.21(d) will not be satisfied. To satisfy the safe harbor, the firewall must be described in a written policy that is distributed to all relevant employees, consultants, and clients affected by the policy. The firewall must be designed and implemented to prohibit the flow of information between employees or consultants providing services for the person paying for the communication; and the persons currently or previously providing services to the candidate, the candidate's committee, the candidate's opponent, the opponent's committee, or a political party committee. The safe harbor does not apply if specific	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	information indicates that, despite the firewall, information about the candidate's or political party committee's campaign plans, projects, activities, or needs that are material to the creation, production, or distribution of the communication was used by or conveyed to the person paying for the communication. The burden is on the FEC or a complainant to show that a commercial vendor, former employee, or political committee failed to implement an adequate firewall to prevent material information from passing through it. 11 C.F.R. §109.21(h). An example of an acceptable firewall is found in MUR 5506 (EMILY's List), First General Counsel's Report at 6-7. The firewall prohibited employees, volunteers, and consultants who handled advertising buys from interacting with federal candidates, political party committees, or their agents, and from interacting with others within EMILY's List regarding specified candidates or officeholders. For a robust firewall, the common vendor of a candidate and Super PAC should consider the following features: (i) a prohibition on interaction between personnel who work on a candidate's campaign and the personnel who work on the Super PAC's efforts in support of the candidate; (ii) a prohibition on interaction between personnel who worked with a particular candidate and personnel working on the candidate's ad purchases; (iii) a requirement that information obtained from a candidate is kept in a confidential silo that only personnel working on the candidate's advertisements have access to;	

ACTIVITY	FEDERAL ELECTION CAMPAIGN ACT OF 1971, AS AMENDED ("FECA")	INTERNAL REVENUE CODE OF 1986, AS AMENDED ("I.R.C.")
STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	and (iv) a requirement that personnel working on a candidate's advertisements are physically located separate from personnel working on the Super PAC's advertisements. See Matt Choi, "An Avenue for Corruption: Super PACs and the Common Vendor Loophole," 18 Northwestern Journal of Law & Social Policy 99, 128-29 (Fall 2022); Covington & Burling LLP, "Forming and Operating Super PACs: A Practical Guide for Political Consultants in 2016," at 4 (May 23, 2016) ("A Super PAC should ensure that its vendors, especially those involved in media, polling, and political consulting, do not serve as a conduit of information from a candidate, campaign, or political party to the Super PAC (or vice versa). One way to do this is for the Super PAC to only work with vendors who do not work for a candidate or political party the Super PAC supports. An alternative is for the vendor to put in place a 'firewall' system that prevents the flow of information from those working for the candidate to those working for the Super PAC. The FEC has recognized that firewalls can be an effective barrier to coordination. Super PACs retaining vendors that provide services to candidates should consider whether those vendors have, or should have, firewall policies in place, and ensure that any such policies are adequate.").	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	(n) The conduct test for former employees and independent contractors of a candidate's committee or political party does not apply after 120 days. For example, a senior member of a candidate's staff can leave the staff on April 1 of a two-year election cycle, and by August 1 of the same year that person's status as a former employee no longer makes a difference. That person can then become the political director of a Super PAC that primarily supports that candidate, or that supports a broad range of candidates. (o) Within the 120 day period after leaving a candidate committee or political party, status as a former employee or as a common vendor by itself is insufficient to satisfy the conduct prong. The former employee or common vendor must use or convey nonpublic inside information from the candidate's campaign regarding the campaign's plans or needs to the organization paying for the ads. If the candidate's committee goes public with this information, such as by posts on the Internet or social media, the content prong is not satisfied. Moreover, the candidate committee's public request of support from independent groups also means that the content prong is not satisfied. (p) One commentator has criticized the prohibition on the use of common vendors and former employees: [T]he specific limitation on the use of vendors and former employees is indefensible under Buckley. The theory	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	needed to support such a prophylactic is that common vendors and former employees serve as go-betweens or agents, representing the parties in the type of quid-pro-quo bargaining Buckley held could be limited. In fact, there is no evidence that vendors or former employees are particularly utilized as agents to negotiate quid-pro-quo arrangements. To the extent they might be, actions by agents are already included in determining what conduct is prohibited for coordination purposes. A bribe is a bribe whether negotiated directly by the parties or by agents representing their interests, so there is no reason to single out vendors and former employees for special treatment. Indeed, vendors are particularly poor choices for such a role, given that campaign disbursements to a vendor must be disclosed pursuant to the Act. The trail to the vendor is immediately obvious. A former employee of the candidate currently in the open employ of the independent speaker would seem only a marginally less disastrous choice as the go-between for a corrupt bargain. . . . . It cannot be said that the mere presence of the candidate's former associates, staff, or current supporters working with a Super PAC creates an opportunity for bargaining the quid-pro-quo. To use Professor Briffault's example, Mr. Spies working for Restore Our Future is no more bargaining with the candidate or his agents than Mr. Spies working for a	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	different Super PAC that spends nothing to support Mr. Romney. No bargaining opportunities arise unless he has contact with the campaign or candidate post-Super PAC employment. It is his present conduct, not his past position or conduct, that can be regulated in the interest of preventing corruption. It is possible, of course, that a candidate may issue instructions to a former aide – "please establish a Super PAC and make expenditures on my behalf. You will be rewarded with government favors and subsidies for your clients." And one might find such prophylactic tempting. But the candidate can equally do that with someone he has never met, or at least someone who has never worked closely with the candidate. While some leeway may be allowed for "the appearance of corruption," the system cannot operate on the assumption that all prior contact with a candidate is suspicious, and therefore disqualifies a would be speaker from the right to make expenditures. Such a presumption would allow the exception granted by Buckley to regulated coordinated activity to swallow the rule protecting independent speech. [Bradley A. Smith, "'Super PACs' and the Role of 'Coordination' in Campaign Finance Law," 50 Willamette Law Review 603, 628-29, 632-33 (2013)] Cf. Robert Bauer, "Coordinating with a Super PAC, Raising Money for It, and the Difference Between the Two," More Soft Money Hard Law (Jan. 27, 2014) (under Buckley an expenditure is a coordinated communication only when	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	there is a candidate-committee contact of strategic significance regarding the core organizational strategy for persuading voters; fundraising for a Super PAC should not count as coordination because the Super PAC may or may not produce a message helpful to the candidate) (available at http://www.moresoftmoneyhardlaw.com/2014/01/coordinating-super-pac-raisng-money-difference-two/); Robert Bauer, "Professor Briffault on Super PACs and the Question of 'Coordination,'" More Soft Money Hard Law (May 8, 2013) (any independent group can effectively align its message with a candidate's message regardless of past employment or other personal connection with a candidate; under Buckley coordination can occur only when there is coordination over a spender's messaging strategy, and not over fundraising strategy; a candidate's decision to raise money for a Super PAC does not guarantee that the Super PAC will allow the candidate to control the Super PAC's spending) (available at http://www.moresoftmoneyhardlaw.com/2013/05/professor-briffault-on-super-pacs-and-the-question-of-coordination/). (q) Two commentators have criticized the tests under the conduct prong as ineffective to deter bargaining between a spender and a candidate over the spender's receipt of value from the candidate in exchange for the spender's expenditure in support of the candidate:	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	Do existing coordination rules frustrate bargaining? In theory, maybe a little. In practice, almost certainly not. Recall, this time in reverse order, the situations in which an expenditure satisfies the conduct prong of the coordination test. The fifth and fourth situations arise when someone (not the politician) recently connected to a campaign provides information to an outsider that is material to that outsider's ad or other expenditure. These situations have nothing to do with bargaining. They do not prevent an outsider from hiring someone recently connected to a campaign – the kind of person who could negotiate a deal – nor do they prevent outsiders from talking directly to politicians. The third and second situations arise when the politician provides input on the contents or form of an expenditure. These situations cannot block much bargaining. For one thing, enforcement presents a challenge. Imagine a bad actor and a crooked politician prepared to engage in an illegal deal. All they need is a chance to bargain over details, like the exact contents of the ad that will serve as a quid. Will coordination rules cause them to pull back, or will they violate the rules under the safe assumption that not every conversation gets monitored? We suspect the latter. But suppose we are wrong, and would-be criminals, for whatever reason, respect this particular rule and do not discuss the substance of the quid. As far as the coordination rules are concerned, they can still bargain, they just cannot discuss the substance of the expenditure.	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	To illustrate, suppose an outsider and a politician agree to a corrupt exchange. The outsider gets a favorable vote on a bill, and the politician gets expenditures worth $100,000 to her. How can the outsider convey the $100,000? The parties could coordinate on the contents of an ad. The ad would have an EF [efficiency factor] of 1, or close to it, and the outsider could fulfill his end of the bargain by spending $100,000, or only slightly more. Of course, that ad would violate the limit on coordinated expenditures. Alternatively, the parties could *not* coordinate on the contents of the ad. Instead, they could agree that the outsider would contribute money to a third-party group – say, a Super PAC – that supports the candidate. The Super PAC need not know about the illegal exchange; the parties surely would prefer that it did not. The higher the Super PAC's EF, the less the outsider would have to contribute to convey $100,000. This exchange, though illegal, would not violate the coordination rules. Even if perfectly enforced, the rules mentioned so far would not address this kind of bargaining. However, we are left with the first prong, which arises when the expenditure is 'created, produced, or distributed at the request or suggestion of the candidate.' Although the fifth, fourth, third, and second situations in which an expenditure becomes coordinated would not capture the scenario just described, the first would. Nonetheless, the first prong has limitations. Enforcement again presents a challenge: can we	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	monitor politicians' utterances? Can we be sure Rothblatt and his parent, while barbequing in the family's backyard, do not exchange a few words about expenditures? Setting that aside, bad actors could avoid this situation by not discussing the expenditures. In the example, the outsider and politician could agree to the corrupt exchange while leaving the nature of the quid open-ended. Instead of agreeing to convey expenditures worth $100,000, they could agree that the outsider would convey $100,000 in value. The outsider could then opt to convey the value with expenditures. The coordination rules do not address this kind of corrupt bargaining. [Michael D. Gilbert & Brian Barnes, "The Coordination Fallacy," 43 Florida State University Law Review 399, 418-20 (Winter 2016) (footnotes omitted)]. (r) For a single-candidate Super PAC, the content prong is rarely at issue, and the conduct prong is often at issue. For Super PACs that support a broad range of candidates, both the content prong and the conduct prong are often at issue. (s) A coordinated communication does not require formal agreement or collaboration between the person paying for the communication and the candidate, the candidate's committee, political party committee, or any of their agents. Bipartisan Campaign Reform Act, Pub. L. No. 107-155,	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	§214(c) (2002); 52 U.S.C. §30116(7)(B)(ii) note; 11 C.F.R. §109.21(e); FEC Advisory Opinion 2016-21. (t) To be an agent of a candidate, candidate's committee, or political party committee, a person must have actual authorization, either express or implied, from a specific principal to engage in specific activities, and then engage in those activities on behalf of that specific principal. These activities would also result in a coordinated communication if carried out directly by the candidate, the candidate committee's staff, or a political party official. 11 C.F.R. §109.3(a) and (b). (u) Both FECA and the FEC regulations address the use of campaign material produced or prepared by a campaign: (i) An expenditure made to distribute or republish in whole or in part campaign material produced or prepared by a candidate's campaign is an in-kind contribution to the candidate. 52 U.S.C. §30116(a)(7)(B)(iii) (formerly 2 U.S.C. §441a(a)(7)(B)(iii)); 11 C.F.R. §109.23(a); FEC Advisory Opinion 2008-10 (the use of footage of a candidate at a public appearance in an advertisement posted on a website that enables individuals to purchase TV airtime for the advertisements that they chose from the advertisements created by the website's sponsor, or that the individuals created from software tools provided by the website's sponsor, did not constitute republication of	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	campaign materials; if the footage contained images of campaign materials, such as campaign signs, buttons, or t-shirts with slogans, at the public appearance, the use of the footage would not become a republication of campaign materials). See also MUR 6535 (Restore Our Future) (FEC found reason to believe that Restore Our Future, an independent expenditure-only political committee that supported the candidacy of Mitt Romney for President, and Charles R. Spies, the committee's treasurer, violated 52 U.S.C. §§30104(b), by failing to report expenditures as contributions to Romney for President, and 52 U.S.C. §30116(a), by making excessive in-kind contributions to Romney for President, by republishing campaign materials prepared by Romney for President; FEC entered into a conciliation agreement on Nov. 12, 2015 that imposed a civil penalty of $50,000; in 2007, Romney for President paid to broadcast an advertisement entitled "The Search" that featured Romney's efforts in 1996 to help find the missing daughter of a Bain Capital colleague; in 2012, Restore Our Future paid to broadcast a version of the "The Search" that it entitled "Saved;" the Saved advertisement contained different footage of New York City and Romney and different disclaimers, but was otherwise identical; Restore Our Future and Spies contended that they operated under the good faith belief that Mitt Romney as a candidate for President in 2008 was legally distinct from Romney as	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	candidate for President in 2012, and therefore Restore Our Future did not republish any footage or campaign materials prepared by a current candidate or campaign for federal office; FEC acknowledged in its Factual and Legal Analysis that the case was one of first impression, and Restore Our Future's reading of the definition of candidate under 11 C.F.R. §100.3(b) was not unreasonable); MUR 6667 (House Majority PAC & Friends of Cheri Bustos for Congress) and MUR 6617 (Christie Vilsack for Iowa), Statement of Reasons of Commissioners Caroline C. Hunter and Matthew S. Petersen (two of four commissioners found no violation of the republication prohibition when an independent expenditure group incorporated footage of the candidate from the campaign's ad into the group's commercial when the commercial had its own message; candidate's footage took up eleven seconds of group's thirty-three second commercial; critical issue is whether the independent expenditure group's message is distinct from the candidate's message, or whether it repeats verbatim the candidate's message); MUR 6357 (American Crossroads), Statement of Reasons of Chair Caroline Hunter and Commissioners Donald F. McGahn and Matthew S. Petersen (Super PAC can use snippets of a campaign's publicly available "B roll" footage as long as the Super PAC's ad does not repeat the content, format, and overall message of the candidate's ad; Super PAC does not republish candidate's ad when the Super PAC adds its own text, graphic, audio, and narration	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	that causes the ad to become the Super PAC's message; fact that the Super PAC's ad and the campaign's ad promote the same themes is not materially significant; only if the Super PAC's ad is close to a carbon copy of the candidate's ad does the Super PAC run afoul of the prohibition on republication). Cf. Brent Ferguson, "Beyond Coordination: Defining Indirect Campaign Contributions for the Super PAC Era," 42 Hastings Constitutional Law Quarterly 471, 522-23 (Spring 2015) ("[R]edistribution of campaign material or use of a campaign's footage of a candidate should be treated as a contribution even if the material is made publicly available. While the FEC has long treated dissemination of campaign material as an in-kind contribution, campaigns have recently begun to post video footage of candidates online so that friendly Super PACs can use the footage in 'independent' advertisements. Such redistribution of online video can be compared to leaving campaign signs and flyers in a public area and allowing others to distribute them. If a person or group engaged in an expensive distribution effort, few would question treating it as a contribution because of the implicit suggestion of action by a candidate. First, candidates who provide such material for any outside group to use are often seeking to circumvent the law, and a prophylactic provision preventing such action is surely permissible. Further, a candidate's decision to publicly disseminate campaign material is definitive action indicating	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	the utility of such usage, as well as an implicit request or suggestion that such material be used for outside advertisements. Just like candidates who fundraise for Super PACs, a candidate posting video footage online certainly cannot be sure that all expenditures containing the material will be beneficial, but has made a decision that use of such material will generally be helpful, therefore heightening the risk of a quid pro quo. Further, the infringement on speech that would result from restricting this practice is narrow – use of campaign materials is not necessary to create an effective message, and restrictions on their use will not appreciably limit a spender's freedom to communicate.") (footnotes omitted). See generally James Arkin, "Democrats Dodge Campaign Finance Law," Politico (June 19, 2018) ("Coordination between campaigns and outside groups is illegal, though both parties' election lawyers regularly give candidates a green light to evade that ban by sharing information in the public domain – for example, posting long YouTube clips clearly meant for use by friendly Super PACs. Now, McCaskill and other Democratic senators are pushing the limits by essentially posting instruction manuals on how they prefer allied groups to attack their opponents, which Super PACs have then turned into ads within a matter of days or weeks. The messages are short, featuring just a couple of paragraphs or set of bullet points detailing either a line of praise for the senator or criticism aimed at their	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	opponent. Occasionally, they link to larger research documents detailing and backing up the specific claims. Links to these pages appear on the front page of the campaigns' websites under innocuous headlines like "Missourians Need to Know" or "A Special Message for Hoosier Voters.") (available at https://politico.com/story/2018/06/19/democrats-campaigns-super-pac-finance-rules-632802); Phil Mattingly, "The Super PAC Workaround: How Candidates Quietly, Legally Communicate," Bloomberg Businessweek (Aug. 28, 2014) ("In practice, campaigns have found ways to talk to Super PACs while staying on the right side of the law. Gardner's [Republican Representative Cory Gardner of Colorado] race illustrates how the system works. Within weeks of his declaring his Senate run, Americans for Prosperity, backed by billionaire brothers Charles and David Koch, told the Washington Post it would spend $970,000 on three weeks of television, radio, and online ads attacking incumbent Democratic Senator Mark Udall. That news was a signal that Gardner, who was unopposed in the primary, could hang back and focus on raising money – even as Democratic groups began running their own ads attacking him. Then, the day after the Americans for Prosperity ads ended, another Koch-backed group, Freedom Partners, stepped in with three more weeks of commercials. In the first week of May, the political spending arm of the U.S. Chamber of Commerce announced it would put up another $1.1 million	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	for a third wave of pro-Gardner ads, including some in Spanish. On May 19 the Associated Press reported that American Crossroads, the Super PAC co-founded by Karl Rove, and its issue advocacy arm, Crossroads GPS, planned to spend $2.3 million in Colorado. That flagged the ad buy to Gardner and outside groups aligned with his campaign, along with everyone else. Two days later, as required by law, filings showed up on the Federal Communications Commission website listing the times and stations where those ads would run, making it clear that there was a period leading up to the June 24 primary when there would be no outside ads. During that window, the Gardner campaign – which declined to comment for this story – ran its own ads.") (available at http://www.businessweek.com/articles/2014-08-28/how-candidates-communicate-legally-with-super-pacs); Ashley Parker, "Viral Video Turns Senator Into a Silent Comedy Star," The New York Times, March 17, 2014, at A14 ("When Senator Mitch McConnell's re-election campaign released two-and-a-half minutes of video footage featuring him wordlessly smiling, it was most likely hoping to provide a friendly 'Super PAC' with high-quality images of Mr. McConnell to use in ads. . . . Because campaigns are legally prohibited from coordinating with Super PACs, they are increasingly publishing what is known as B-roll footage of their candidates, which is available for public consumption, including for use by outside groups."); Alex Roarty & Shane	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	Goldmacher, "They're Not Allowed to Talk. But Candidates and PACs Are Brazenly Communicating All the Time.," National Journal, Oct. 30, 2014 ("The idea behind barring coordination was a simple one. It was to insulate politicians and political parties from the potentially corrupting influence of the unbridled amounts of money being raised by outside groups. But in the four years since Citizens United, candidates and their Super PAC benefactors have edged closer and closer. . . . [A] bipartisan collection of party committees are not so much revealing their agendas as trying to write one for their allies. The National Republican Congressional Committee has an entire website – DemocratFacts.org [http://democratfacts.org/] – to better communicate in plain sight with outside GOP groups. The Democratic Congressional Campaign Committee didn't bother creating a separate website to house its own set of instructions – they're available a click away [http://archive.dccc.org/races] from the group's home page.") (available at http://www.nationaljournal.com/politics/they-re-not-allowed-to-talk-but-candidates-and-pacs-are-brazenly-communicating-all-the-time-20141030). (ii) The Philadelphia Board of Ethics addresses republication of campaign communications or materials and the use of B-roll in its Campaign Finance Regulations. Under the Regulations, an expenditure made to reproduce, republish, or disseminate a campaign communication	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	(including audio recordings or video footage) or campaign material (such as photographs, flyers, signs, or brochures) prepared by a campaign: (A) shall be considered an in-kind contribution made by the person making the expenditure; and (B) shall be considered an in-kind contribution received by the campaign if the person making the expenditure obtains the communication or material directly from the campaign or from another source with the consent of the campaign. A campaign communication or campaign material is obtained with the campaign's consent if the campaign provides it to a third-party for the purpose of enabling another person to obtain the communication or material from that third-party and subsequently republish some or all of it. Philadelphia Board of Ethics, Regulation No. 1, Campaign Finance, Subpart I. Coordinated Expenditures, Paragraph 1.34(a) and (b), at 21. (iii) The Example for Paragraph 1.34(a) and (b) provides: Three weeks before election day, Candidate A's campaign uploads five minutes of b-roll video footage to her YouTube channel. The political committee Pennsylvanians for a Better Pennsylvania downloads the b-roll footage and uses it to create a television advertisement. The committee spends $100,000 to run the advertisement on three television stations during the week before election day.	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	Candidate A posted the b-roll footage for the purpose of enabling another person to obtain it. Pennsylvanians for a Better Pennsylvania obtained a campaign communication created by Candidate A's campaign with the consent of the candidate's campaign. As such, the committee's expenditure of $100,000 was coordinated with Candidate A's campaign and is both an excess in-kind contribution made by the committee and an excess in-kind contribution received by Candidate A. (v) The FEC regulations provide the following exceptions to the prohibition on distribution or republication of materials prepared by a candidate's campaign: (i) The campaign material is incorporated into a communication that advocates the defeat of the candidate or party that prepared the material; (ii) The campaign material is disseminated, distributed, or republished in a news story, commentary, or editorial exempted under 11 C.F.R. §100.73 or 11 C.F.R. §100.132; (iii) The campaign material used consists of a brief quote of materials that incorporate a candidate's position as part of a person's expression of its own views; or (iv) A national political party committee, or a state or subordinate political party committee, pays for the	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	dissemination, distribution, or republication of campaign materials using coordinated party expenditure authority under 11 C.F.R. §109.32. 11 C.F.R. §109.23(b). (w) The FEC regulations contain the following safe harbor to protect bona fide business communications from treatment as coordinated communications. Public communications that refer to a clearly identified federal candidate in that person's capacity as the owner or operation of a business that existed before that person became a candidate, and that do not promote, attack, support, or oppose that candidate or an opponent for the same office, are not coordinated communications. In addition, the communication must be consistent with other public communications made by the business before the person became a candidate with respect to the medium, timing, content, and geographic distribution of the communication. 11 C.F.R. §109.21(i). 48. The creation and broadcast by EchoStar Satellite LLC, a pay-TV satellite service, of public service announcements featuring members of Congress soliciting funds for charitable organizations came within the charitable solicitation exception to the definition of coordinated communication upon satisfying the following requirements: (a) a federal candidate solicits funds for organizations described in Code Section 501(c) that have applied for or been granted tax-exempt status; (b) the solicitation is a	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	general solicitation for a Section 501(c) organization that does not engage in activities with respect to an election, or the organization's principal purpose is not to conduct election activity and the solicitation is not to obtain funds for activities in connection with an election; (c) the announcement will not be distributed more than ninety days before the candidate's election, or will not be publicly distributed within the candidate's jurisdiction; (d) the announcement does not promote, support, attack, or oppose the candidates participating the announcements; and (e) the announcement does not contain campaign materials, expressly advocate the election or defeat of a clearly identified federal candidate, refer to any political party, election, or campaign, or solicit any contributions for a political campaign or political committee. FEC Advisory Opinion 2006-10. 49. The Palm Springs Desert Resorts Convention and Visitors Authority, an unincorporated organization that promoted tourism from Los Angeles and Orange Counties, would not make a coordinated communication in the following situation. Representative Mary Bono would serve as its spokesperson and host of a thirty minute infomercial to be aired for eight months, and the infomercial would not: (a) be received by 50,000 or more persons in Representative Bono's district; (b) disseminate, distribute, republish, in whole or in part, campaign materials prepared by Representative Bono, her authorized committee, or their	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	agents; (c) expressly advocate the election or defeat of Representative Bono or any other federal candidate; and (d) be broadcast in Representative Bono's district within ninety days of the general election. FEC Advisory Opinion 2006-29. 50. (a) In FEC Advisory Opinion 2021-4, the FEC approved Pray.com's proposal to invite Members of Congress to produce five-minute audio and video statements discussing matters of faith that Pray.com will share with users of its digital platform. The FEC found that the activity would not result in coordinated communications or a prohibited corporate in-kind contribution to participating Members who are also candidates for federal office. (b) Pray.com, a for-profit corporation, operates a free mobile application and website that provide users with faith-based digital content. Users of the platform can access faith-based audio content and connect directly with faith leaders and explore faith communities. The mobile application is free to download. Sixty percent of the digital content is available through the application and website at no cost; the remaining forty percent is only accessible with a paid subscription. (c) Pray.com will invite all Members of Congress, irrespective of party, to record and submit a five-minute, self-narrated segment for its platform. Members will have	

ACTIVITY	FEDERAL ELECTION CAMPAIGN ACT OF 1971, AS AMENDED ("FECA")	INTERNAL REVENUE CODE OF 1986, AS AMENDED ("I.R.C.")
STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	full creative approval over their own segment, but Pray.com will reserve the right to edit the message if the Member deviates from the topic of prayer. Members' statements will be accessible to all Pray.com users for free. Pray.com may also include Members' statements in its advertisements on social media and television as a way to showcase the breadth of content on its platform. (d) The FEC found that since a Member-candidate's statement would not satisfy the content prong of 11 C.F.R. §109.21(a)(2) and (c), it would not be a coordinated communication. This prong applies only to communications that are either a public communication or an electioneering communication. Communications made over the Internet are not public communications unless they are placed or promoted for a fee on another person's website, digital device, application, or advertising platform. 11 C.F.R. §100.26. Similarly, any communication over the Internet is not an electioneering communication. 11 C.F.R. §100.29(c)(1). (e) The FEC also found that Pray.com would not make corporate in-kind contributions. Invitees will be asked to participate because of their status as legislators rather than as candidates, and their remarks will not contain express advocacy or solicit contributions. Pray.com will provide participating Members with a list of questions and prompts for general biographical and professional information and	

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	the Members' personal views on matters of faith – the content that Pray.com is in the business of providing to its users. The posting of the Members' statements would serve Pray.com's commercial interests by increasing the volume of its freely-accessible faith-based content and potentially attracting users from diverse ideological backgrounds to its platform – some of whom would then choose to become paid subscribers to access the platform's premium content. See also FEC Advisory Opinion 1996-21 (National Right to Life Conventions) (no contribution resulted from nonprofit's invitation for Members of Congress to give speeches on pro-life issues at convention; invitations were based on their roles as legislators, rather than candidates, and speeches were staged in a manner that did not allow candidates to expressly advocate their elections or solicit contributions); FEC Advisory Opinion 1992-6 (Duke) (university's payment of honorarium and travel expenses to presidential candidate was not a contribution if candidate did not solicit contributions or support, or discuss candidacy in speech).	

ACTIVITY	FEDERAL ELECTION CAMPAIGN ACT OF 1971, AS AMENDED ("FECA")	INTERNAL REVENUE CODE OF 1986, AS AMENDED ("I.R.C.")
STATUTORY AND REGULATORY PROVISIONS ON CONTRIBUTIONS TO AND FUNDRAISING FOR SECTION 501(c)(3) ORGANIZATIONS		
	1. (a) A national, state, district, or local committee of a political party, including a national congressional campaign committee, or any entity established, financed, or controlled by a party committee, or any officer or agent acting on behalf of a party committee, cannot solicit funds for or make or direct any donations to an organization exempt from tax under I.R.C. §501(c), if the organization makes expenditures or disbursements in connection with an election for federal office, including without limitation expenditures or disbursements for federal election activity. 52 U.S.C. §30125(d) (formerly 2 U.S.C. §441i(d)); 11 C.F.R. §§300.11, 300.37, 300.50, and 300.51. Paragraph 2 below discusses the definitions of solicitation and direct. (b) Federal election activity means: (i) voter registration activity in the 120 days before a regularly scheduled federal election; (ii) voter identification, get-out-the-vote activity, and generic campaign activity in connection with an election in which a federal candidate is on the ballot; (iii) public communications that refer to a clearly identified federal candidate and promote, support, attack, or oppose a candidate for that office, regardless of whether the communications expressly advocate a vote for or against a candidate; or (iv) services by a state or local party employee who spends more than 25% of paid time in a	1. No statutory or regulatory provisions. 2. In T.A.M. 200044038 (Nov. 3, 2000), the IRS applied the general statutory and regulatory provisions against campaign intervention to fundraising letters sent out on the joint letterhead of a Section 501(c)(3) organization and a candidate, which were signed only by the candidate: In summary, the content and the timing of the letter in question constitute prohibited political campaign intervention. Statements made in the letters supported A's [the candidate's] political agenda and criticized the opposing candidate. The letters were sent during the period of A's primary election as well as the general election up to Oct. 4, 1996. There were also mailings in July and August of 1996 and three mailings in September of 1996. The total of all letters were sent to 2.7 million addresses, many of recipients of such statements could be assumed to be eligible voters in the up-coming election in that the election was a national election as opposed to a district or state-wide election. As stated earlier, A's signature of the letter is the most determinative factor as to political campaign intervention. It represents a forum for A to present positive aspects of his candidacy and negative aspects of his opponent.

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	month on activities in connection with a federal election. 52 U.S.C. §30101(2)(A) (formerly 2 U.S.C. §431(20)(A)). Subparagraph (d) discusses the definition of generic campaign activity; subparagraphs (e)-(f) discuss the definition of voter registration activity; subparagraphs (g)-(h) discuss the definition of get-out-the-vote activity; subparagraph (i) discusses the exceptions to the definition of voter registration activity and get-out-the-vote activity; subparagraph (j) discusses the exception to the definition of federal election activity and get-out-the-vote activity conducted in connection with a nonfederal election; subparagraph (k) discusses the exception to the definition of federal election activity for the activities of state, district, and local party committees, and associations of state and local candidates that involve de minimis costs; subparagraph (l) discusses the definition of voter identification; subparagraph (m) discusses the definition of "in connection with an election in which a candidate for federal office appears on the ballot," and subparagraph (n) discusses the definition of public communication. (c) In McConnell v. FEC, 540 U.S. 93, 174-81 (2003), the United States Supreme Court upheld the prohibition on solicitation of contributions to Section 501(c) organizations against constitutional challenge. The Court held that the "solicitation restriction is closely drawn to prevent political parties from using tax-exempt organizations as soft-money	Accord, T.A.M. 9609007 (March 1, 1996). See discussion of joint fundraising by a Section 501(c)(3) organization and a PAC in Paragraphs 20 and 21 of the I.R.C. column for "Regulatory Provisions On Contributions, Expenditures, And Electioneering." 3. The IRS has privately ruled that a Section 501(c)(3) public charity can solicit funds with the assistance of a United States Senator and Congressman without engaging in prohibited campaign intervention. The public charity was a research and educational institution organized to promote public policies based on free enterprise, limited government, individual freedom, traditional American values, and a strong national defense. As part of its direct mail program, the public charity proposed sending out two fundraising letters that requested the recipient to make a contribution and complete a short survey. One letter was on the Senator's letterhead, and the other letter was on the public charity's letterhead. The Senator signed the first letter, and the Congressman signed the second letter. The Senator and Congressman were candidates for re-election, and the public charity will not send the letters to recipients residing in the state that the Senator represented, nor to recipients residing in the district that the Congressman represented. In addition, the public charity will not make responses to the surveys available to the Senator and

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STATUTORY AND REGULATORY PROVISIONS ON CONTRIBUTIONS TO AND FUNDRAISING FOR SECTION 501(c)(3) ORGANIZATIONS		
	surrogates." 540 U.S. at 177. The Court also held that to avoid constitutional problems, it would construe the prohibition on making or directing contributions to the specified Section 501(c) organizations to permit political parties "to make or direct donations of money to any tax-exempt organization that has otherwise been raised in compliance with FECA." 540 U.S. at 181. (d) Generic campaign activity means a campaign activity that promotes or opposes a political party, and does not promote a federal or nonfederal candidate. 52 U.S.C. §30101(21) (formerly 2 U.S.C. §431(21)). (e) The FEC has issued regulations defining "voter registration activity" to cover activities that assist, encourage, or urge potential voters to register to vote. The following activities are voter registration activities: (i) encouraging or urging potential voters to register to vote, whether by mail (including direct mail), e-mail, in person, by telephone (including pre-recorded telephone calls, phone banks, and messaging such as SMS and MMS), or by any other means; (ii) preparing and distributing information about registration and voting;	Congressman. Furthermore, nothing in the fundraising letters suggests or encourages the recipient to make a contribution to the candidate. The IRS ruled that the fundraising letters would not constitute prohibited campaign intervention. PLR 200602042. Cf. T.A.M. 2000-44-038 (July 24, 2000) (public charity described in PLR 200602042 sent out fundraising letters signed by Presidential candidate Bob Dole; letters solicited funds and support for the Republican party, and were distributed shortly before the 1996 presidential election; IRS found prohibited campaign intervention). See generally Paul Streckfus, "Is the IRS Letting the Heritage Foundation Off the Hook?," Tax Notes, Feb. 6, 2006, at 653-54.

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	(iii) distributing voter registration forms or instructions to potential voters; (iv) answering questions about how to complete or file a voter registration form, or assisting potential voters in completing or filing voter registration forms; (v) submitting or delivering a completed voter registration form on behalf of a potential voter; (vi) offering or arranging to transport, or actually transporting, potential voters to a board of elections or county clerk's office for them to fill out voter registration forms; or (vii) any other activity that assists potential voters to register to vote. 11 C.F.R. §100.24(a)(2)(i). (f) Examples of voter registration activity are: (i) sending a mass mailing of voter registration forms; and (ii) submitting completed voter registration forms to the appropriate state or local office handling voter registration. (g) The FEC has issued regulations defining "get-out-the vote activity" as activities that assist, encourage, or urge potential voters to vote. The following activities are get-out-the vote activities:	

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	(i) encouraging or urging potential voters to vote, whether by mail (including direct mail), e-mail, in person, by telephone (including pre-recorded telephone calls, phone banks, and messaging such as SMS and MMS), or by any other means; (ii) informing potential voters, whether by mail (including direct mail), e-mail, in person, by telephone (including pre-recorded telephone calls, phone banks, and messaging such as SMS and MMS), or by any other means, about the hours and location of polling places, or about early voting or voting by absentee ballot; (iii) offering or arranging to transport voters to the polls, as well as actually transporting voters to the polls; and (iv) all other activities that assist potential voters in voting. 11 C.F.R. §100.24(a)(3)(i). (h) Examples of get-out-the-vote activity are: (i) driving a sound truck through a neighborhood that plays a message urging listeners to "Vote next Tuesday at the Main Street community center;" and (ii) making telephone calls, including robocalls, reminding the recipient of the times during which the polls are open on election day. (i) The regulations contain exceptions to the definition of voter registration activity and get-out-the-vote activity for a	

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	brief exhortation to register to vote, or to vote, as long as the exhortation is incidental to a communication, activity, or event. 11 C.F.R. §100.24(a)(2)(ii) and (a)(3)(ii). The following examples show the application of this exception: (i) a mailer praises the public service record of mayoral candidate X or discusses his campaign platform. The mailer concludes by reminding recipients, "Don't forget to register to vote for X by October 1st." The exception applies. 11 C.F.R. §100.24(a)(2)(ii)(A). (ii) a phone call for a State party fundraiser gives listeners information about the event, solicits donations, and concludes by reminding listeners, "Don't forget to register to vote." The exception applies. 11 C.F.R. §100.24(a)(2)(ii)(B). (iii) A mailer praises the public service record of mayoral candidate X or discusses his campaign platform. The mailer concludes by reminding recipients, "Vote for X on November 4th." The exception applies. 11 C.F.R. §100.24(a)(3)(ii)(A). (iv) A phone call for a State party fundraiser gives listeners information about the event, solicits donations, and concludes by reminding listeners, "Don't forget to vote on	

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	November 4th." The exception applies. 11 C.F.R. §100.24(a)(3)(ii)(B). (v) Exhortations to register to vote, or to vote, that consume several minutes of a speech, or that occupy a large amount of space on a mailer, are not brief and will not qualify for the exception. Preamble to Final Rules of Federal Election Commission on Definition of Federal Election Activity, 75 F.R. 55,257, 55,261, 55, 263-64 (Sept. 10, 2010). (vi) A message in a mailer that stated only "Register to Vote by October 1st!" or "Vote on Election Day!" with no other text would not be incidental and would not satisfy the exception. Id. (j) The regulations also contain an exception to the definition of federal election activity for voter identification activity and get-out-the-vote activity conducted in connection with a nonfederal election. The exception applies to any amount expended or disbursed by a state, district, or local party committee for: (i) voter identification that is conducted solely in connection with a nonfederal election held on a date on which no federal election is held, and that is not used in a subsequent election in which a federal candidate is on the ballot; and	

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	(ii) get-out-the-vote activity that is conducted solely in connection with a nonfederal election held on a date on which no federal election is held, and any communications made as part of the activity refer exclusively to: (A) nonfederal candidates participating in the nonfederal election if the nonfederal candidates are not also federal candidates; (B) ballot referenda or initiatives scheduled for the date of the nonfederal election; or (C) the date, polling hours, and locations of the nonfederal election. 11 C.F.R. §100.24(c)(5)-(6). (k) The regulations also contain an exception to the definition of federal election activity for the following activities of state, district, and local party committees, and associations of state and local candidates that involve de minimis costs: (i) on the website of a party committee or association of state or local candidates, posting a hyperlink to a state or local election board's web page containing information on voting or registering to vote; (ii) on the website of a party committee or association of state or local candidates, enabling visitors to download a voter registration form or absentee ballot application;	

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STATUTORY AND REGULATORY PROVISIONS ON CONTRIBUTIONS TO AND FUNDRAISING FOR SECTION 501(c)(3) ORGANIZATIONS		
	(iii) on the website of a party committee or association of state or local candidates, providing information about voting dates or polling locations and hours of operation; and (iv) placing voter registration forms or absentee ballot applications obtained from the board of elections at the office of a party committee or association of state or local candidates. 11 C.F.R. §100.24(c)(7). (l) The FEC has issued regulations defining "voter identification" as "acquiring information about potential voters, including, but not limited to, obtaining voter lists and creating or enhancing voter lists by verifying or adding information about voters' likelihood of voting in an upcoming election or their likelihood of voting for specific candidates." 11 C.F.R. §100.24(a)(4). (m) The FEC has issued regulations defining "in connection with an election in which a candidate for federal office appears on the ballot" as follows: (i) The period of time beginning on the date of the earliest filing deadline for access to the primary election ballot for federal candidates as determined by state law, or in those states that do not conduct primaries, on January 1 of each	

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	even-numbered year and ending on the date of the general election, up to and including the date of any general runoff. (ii) The period beginning on the date on which the date of a special election in which a candidate for federal office appears on the ballot is set and ending on the date of the special election. 11 C.F.R. §100.24(a)(1)(i)-(ii). (n) A public communication is a communication by means of any broadcast, cable, or satellite communication, newspaper, magazine, outdoor advertising facility, mass mailing, or telephone bank to the general public, or any other form of general public advertising. A mass mailing is a mailing by United States mail or facsimile of more than 500 pieces of mail of an identical or substantially similar nature within any thirty day period. A telephone bank is more than 500 telephone calls of an identical or substantially similar nature within any thirty day period. General public political advertising does not include communications over the Internet, except for communications placed or promoted for a fee on another person's website, digital device, application, or advertising platform. The placement of advertising for a fee includes all potential forms of advertising, such as banner advertisements, streaming video, pop-up advertisements, and directed search results. 52 U.S.C. §30101(22)-(24) (formerly 2 U.S.C. §431(22)-(24)); 11 C.F.R. §§100.26 to	

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	100.28; Preamble to Final Rules of Federal Election Commission on Internet Communications, 71 F.R. 18,589, 18,594 (April 12, 2006). (o) A party committee can establish that the Section 501(c) organization does not make expenditures or disbursements in connection with federal elections by obtaining a signed certification from an authorized representative of the organization that within the current election cycle the organization has not made, and does not intend to make, expenditures or disbursements in connection with an election for federal office (including for federal election activity), and that the organization does not intend to pay debts incurred from the making of expenditures or disbursements in connection with an election for federal office (including for federal election activity) in a prior election cycle. 11 C.F.R. §§300.11(c)-(d) and 300.37(c)-(d). 2. The FEC regulations in 11 C.F.R. §300.2(m)-(n) define solicit and direct as follows: (a) To solicit means to ask, request, or recommend, explicitly or implicitly, that another person make a contribution, donation, transfer of funds, or otherwise provide anything of value. A solicitation is an oral or written communication that, construed as reasonably	

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	understood in the context in which it is made, contains a clear message asking, requesting, or recommending that another person make a contribution, donation, transfer of funds, or otherwise provide anything of value. A solicitation may be made directly or indirectly. The context includes the conduct of persons involved in the communication. A solicitation does not include mere statements of political support or mere guidance as to the applicability of a particular law or regulation. (i) The following types of communications are solicitations: (A) A communication that provides a method of making a contribution or donation, regardless of the communication. This includes, but is not limited to, providing a separate card, envelope, or reply device that contains an address to which funds may be sent and allows contributors or donors to indicate the dollar amount of their contribution or donation to the candidate, political committee, or other organization. (B) A communication that provides instructions on how or where to send contributions or donations, including providing a phone number specifically dedicated to facilitating the making of contributions or donations. However, a communication does not, in and of itself, satisfy the definition of "to solicit" merely because it	

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	includes a mailing address or phone number that is not specifically dedicated to facilitating the making of contributions or donations. (C) A communication that identifies a Web address where the Web page displayed is specifically dedicated to facilitating the making of a contribution or donation, or automatically redirects the Internet user to such a page, or exclusively displays a link to such a page. However, a communication does not, in and of itself, satisfy the definition of "to solicit" merely because it includes the address of a Web page that is not specifically dedicated to facilitating the making of a contribution or donation. (ii) The following statements are solicitations: (A) "Please give $100,000 to Group X." (B) "It is important for our State party to receive at least $100,000 from each of you in this election." (C) "Group X has always helped me financially in my elections. Keep them in mind this fall." (D) "X is an effective State party organization; it needs to obtain as many $100,000 donations as possible."	

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	(E) "Giving $100,000 to Group X would be a very smart idea." (F) "Send all contributions to the following address* * *." (G) "I am not permitted to ask for contributions, but unsolicited contributions will be accepted at the following address* * *." (H) "Group X is having a fundraiser this week; you should go." (I) "You have reached the limit of what you may contribute directly to my campaign, but you can further help my campaign by assisting the State party." (J) A candidate hands a potential donor a list of people who have contributed to a group and the amounts of their contributions. The candidate says, "I see you are not on the list." (K) "I will not forget those who contribute at this crucial stage." (L) The candidate will be very pleased if we can count on you for $10,000."	

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	(M) "Your contribution to this campaign would mean a great deal to the entire party and to me personally." (N) Candidate says to potential donor: "The money you will help us raise will allow us to communicate our message to the voters through Labor Day." (O) "I appreciate all you've done in the past for our party in this State. Looking ahead, we face some tough elections. I'd be very happy if you could maintain the same level of financial support for our State party this year." (P) The head of Group X solicits a contribution from a potential donor in the presence of a candidate. The donor asks the candidate if the contribution to Group X would be a good idea and would help the candidate's campaign. The candidate nods affirmatively. (iii) The following statements are not solicitations: (A) During a policy speech, the candidate says: "Thank you for your support of the Democratic Party." (B) At a ticket-wide rally, the candidate says: "Thank you for your support of my campaign." (C) At a Labor Day rally, the candidate says: "Thank you for your past financial support of the Republican Party."	

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	(D) At a GOTV rally, the candidate says: "Thank you for your continuing support." (E) At a ticket-wide rally, the candidate says: "It is critical that we support the entire Democratic ticket in November." (F) A Federal officeholder says: "Our Senator has done a great job for us this year. The policies she has vigorously promoted in the Senate have really helped the economy of the State." (G) A candidate says: "Thanks to your contributions we have been able to support our President, Senator and Representative during the past election cycle." (b) To direct means to guide, directly or indirectly, a person who has expressed an intent to make a contribution, donation, transfer or funds, or otherwise provide anything of value, by identifying a candidate, political committee or organization, for the receipt of such funds, or things of value. The contribution, donation, transfer, or thing of value may be made or provided directly or through a conduit or intermediary. Direction does not include merely providing information or guidance as to the applicability of a particular law or regulation. 3. The prohibition in Paragraph 1 becomes a problem for Section 501(c)(3) organizations when unscrupulous party	

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	officials direct private persons and entities to make contributions to the organizations to conduct voter registration and get-out-the-vote drives, candidate debates, and other nonpartisan activities. 4. (a) A federal candidate or officeholder can make a general solicitation, without limits on the source or amount of funds, on behalf of any organization that is described in I.R.C. §501(c), other than an organization whose principal purpose is to conduct voter registration activities within 120 days of an election, or voter identification, get-out-the-vote, or generic campaign activity in connection with an election in which a candidate for federal office is on the ballot. 52 U.S.C. §30125 (formerly 2 U.S.C. §441i(e)(4)(A)); 11 C.F.R. §§300.52(a) and (c), and 300.65(a) and (c). A general solicitation does not specify how the funds will or should be spent. Id. (b) The provisions on general solicitation by federal candidates and officeholders do not limit the ability of Section 501(c)(3) organizations to use the funds so raised for otherwise permissible federal election activity. 5. When a Section 501(c)(3) organization raised funds for scholarships for Hispanic students living in El Paso, Texas to pursue undergraduate degrees, and the scholarship recipients did not engage in any activity in connection with	

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	a federal or nonfederal election as part of, or in exchange for, the scholarship, the funds raised and spent by the Section 501(c)(3) organization were not in connection with a federal or nonfederal election under 52 U.S.C. §30125(e)(1)(A)-(B) (formerly 2 U.S.C. §441i(e)(1)(A)-(B)). Accordingly, Representative Silvestre Reyes, whose Congressional district included most of El Paso, and for whom the scholarship was named, could sign written solicitation letters on the Section 501(c)(3) organization's stationery. In addition, the amount he could solicit for the scholarship was not limited by FECA nor subject to its reporting requirements. FEC Advisory Opinion 2003-20. 6. In FEC Advisory Opinion 2004-14, the absence of campaign activity was an important factor in determining that an officeholder's appearance in a public service announcement would not be a solicitation of funds subject to FECA A Congressman, Tom Davis of the Eleventh District of Virginia, planned to appear in a public service announcement to benefit the National Kidney Foundation to promote the Cadillac Invitational Golf Tournament. The announcement would air on cable systems in Northern Virginia, including the Eleventh District. The tournament was strictly a charitable fundraising event held annually to benefit the Foundation, and the Foundation did not engage in any activity in connection with an election. The announcement would not expressly advocate the	

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	Congressman's election, make any reference to his candidacy, nor would any signs, banners, or activities related to his campaign be visible. The Foundation was responsible for the creation of the announcement, and the Congressman's office would pay for taping the announcement. The airtime was donated by the cable broadcasting station. The FEC opined that the Congressman's appearance would not be a solicitation of funds in connection with an election subject to FECA. FEC Advisory Opinion 2004-14. 7. (a) A federal candidate or officeholder can make a solicitation for a Section 501(c) organization to conduct the federal election activities described in Paragraph 1(b)(i)-(ii), or for a Section 501(c) organization whose principal purpose is to conduct these activities, if the candidate or officeholder makes the solicitation only to individuals, and does not solicit more than $20,000 from any individual during a calendar year. 52 U.S.C. §30125(e)(4)(B) (formerly 2 U.S.C. §441i(e)(4)(B)); 11 C.F.R. §§300.52(b)-(c) and 300.65(b)-(c). A federal candidate or officeholder cannot make solicitations on behalf of a Section 501(c) organization for other types of federal election activities, such as public communications promoting or supporting federal candidates. 11 C.F.R. §§300.52(d) and 300.65(d).	

ACTIVITY	FEDERAL ELECTION CAMPAIGN ACT OF 1971, AS AMENDED ("FECA")	INTERNAL REVENUE CODE OF 1986, AS AMENDED ("I.R.C.")
STATUTORY AND REGULATORY PROVISIONS ON CONTRIBUTIONS TO AND FUNDRAISING FOR SECTION 501(c)(3) ORGANIZATIONS		
	(b) A federal candidate or officeholder can determine a Section 501(c) organization's "principal purpose" by obtaining a signed certification from an authorized representative of the organization stating that (i) the organization's principal purpose is not to conduct election activities; and (ii) the organization does not intend to pay debts incurred from the making of expenditures or disbursements in connection with an election for federal office (including for federal election activity) in a prior election cycle. 11 C.F.R. §§300.52(e) and 300.65(e). 8. In FEC Advisory Opinion 2003-32, the FEC elaborated on the permissible use of state campaign funds not raised in accordance with FECA as contributions to Section 501(c)(3) organizations. A candidate for United States Senate from South Carolina, Inez Tenenbaum, had surplus funds in her state campaign account. None of the fundraising for her state campaign referred to her potential candidacy for federal office, and no funds had been raised for her state campaign since she declared her federal candidacy. The surplus funds were not raised in accordance with FECA's contribution limits and source prohibitions. The candidate could contribute the surplus funds to Section 501(c)(3) organizations that did not conduct any election activity, but the candidate could not earmark or designate the contributions for any election	

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	activity by the Section 501(c)(3) organization, including federal election activity and payment of debts arising from any election activity. The FEC opined that since the contribution would not be made in connection with a federal or nonfederal election, it was not subject to the requirement of 52 U.S.C. §30125(e)(1)(A)-(B) (formerly 2 U.S.C. §441i(e)(1)(A)-(B)) that the funds be subject to FECA's contribution limits and source prohibitions. Furthermore, the candidate could not contribute the surplus funds to Section 501(c)(3) organizations that conducted election activity as their principal purpose, including federal election activity under 11 C.F.R. §300.65(c). Since the funds were not raised in accordance with FECA, they could not be spent in connection with an election for federal office under 52 U.S.C. §30125(e)(1)(A)-(B) (formerly 2 U.S.C. §441i(e)(1)(A)-(B)) and 11 C.F.R. §§300.61 and 300.62. Finally, the permissible solicitation rule described in Paragraph 4 above did not apply because the candidate was making a contribution, and not a solicitation. FEC Advisory Opinion 2003-32. 9. (a) In FEC Advisory Opinion 2007-8, the FEC addressed whether an individual can donate funds to Section 501(c)(3) charitable organizations to encourage or commemorate performances by professional entertainers at federal election campaign events. Michael King, an individual, wished to focus the public's attention on the	

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	importance of certain Section 501(c)(3) organizations that provided assistance to the families of U.S. military personnel who served in Iraq. Mr. King was neither a candidate for public office nor an officeholder. Mr. King planned to donate a portion of his personal funds to one or more of the organizations in honor of certain performances at campaign events of political party committees or candidates for federal office. Mr. King hoped that the performances at the campaign events, together with the publicity surrounding his donations, would provide a platform to raise public awareness of these organizations. Mr. King also planned to establish the Foundation, which would also be a Section 501(c)(3) organization, to collect donations from other persons and distribute them for the purposes discussed above. Mr. King or the Foundation would select the recipient organizations, determine the amount of each donation, and choose which performances to honor with donations, possibly with suggestions from the performers. Each performer would volunteer in an individual capacity (rather than as an incorporated entity), and would select the campaign events at which he or she would perform, but would not receive any financial, tax, or other tangible benefit from Mr. King, the Foundation, or any of the organizations receiving the donations. In some cases, Mr.	

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	King and the Foundation would make donations honoring performers who, independently of Mr. King, committed to perform at a campaign event. In other cases, Mr. King would take a more active role in arranging the performances by using his personal contacts in the entertainment industry to identify performers who might be willing to volunteer their services at specific campaign events and encouraging them to do so. He would take those actions either independently of any political campaign, or in coordination with a federal candidate or political party committee. Mr. King would not be compensated for his services and all costs associated with the performances themselves (such as expenses for the rental of the venue and performer's travel) would be paid for by the campaign or political party committee, not by Mr. King, the Foundation, or the performers. In addition, Mr. King and the Foundation planned to publicize their charitable donations on their own websites to draw attention to the work of the charitable organizations. They would not make any public communications under 11 C.F.R. §100.26. (b) The FEC opined that since Mr. King volunteered his time and assistance to federal candidates and political party committees by arranging for performers to appear at campaign events, his services came under the volunteer	

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	exemption from the definition of contribution under 52 U.S.C. §30101(8)(B)(i) (formerly 2 U.S.C. §431(8)(B)(i)) and 11 C.F.R. §100.74. The exception for volunteer activities was restricted to donations of the volunteer's own time and services, and did not generally exempt actual costs incurred on behalf of a federal candidate or political party committee. For example, if Mr. King traveled across the country at the request of a federal candidate to arrange for an entertainer to perform at the candidate's campaign event, then Mr. King's unreimbursed payment for that travel would be a contribution to that candidate's committee to the extent that the travel costs exceeded $1,000 per candidate or $2,000 per year. See 52 U.S.C. §30101(8)(B)(iv) (formerly 2 U.S.C. §431(8)(B)(iv)) and 11 C.F.R. §100.79 (unreimbursed payment for transportation and subsistence expenses); see also 52 U.S.C. §30101(8)(B)(ii) (formerly 2 U.S.C. §431(8)(B)(ii)) and 11 C.F.R. §100.75 (use of volunteer's real or personal property), 11 C.F.R. §100.76 (use or church or community room), and 11 C.F.R. §100.77 (invitations, food, and beverages). (c) Similarly, the value of the performers' services were also exempt under 52 U.S.C. §30101(8)(B)(i) (formerly 2 U.S.C. §431(8)(B)(i)) and 11 C.F.R. §100.74 from the definition of contribution. The performers would provide	

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	personal services to a federal candidate or political party committee in their individual capacities and without compensation, and all costs associated with the performances (such as expenses for the rental of the venue and the performers' travel) would be paid by the federal candidate committee or political party committee, and not by Mr. King, the Foundation, or the performers. (d) Mr. King's proposed charitable donations would not be the payment of compensation to the performers or a contribution by Mr. King to a federal candidate or political committee. Under FECA and FEC regulations, "the payment by any person of compensation for the personal services of another person which are rendered to a political committee without charge for any purpose" is a contribution. See 52 U.S.C. §30101(8)(A)(ii) (formerly 2 U.S.C. §431(8)(A)(ii)); 11 C.F.R. §100.54. Mr. King planned to make donations directly the organizations, and not to the performers. Furthermore, the performers would not receive any financial, tax, or other tangible benefit from Mr. King, the Foundation, or the recipient organizations. Accordingly, Mr. King's donations to charities would not be "compensation" to the performers, and in turn, the donations would not render the performers ineligible for the volunteer exemption.	

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	(e) The FEC also opined that the donations were not prohibited corporate expenditures. The purpose of the donations was to motivate musicians, performers, and other types of talent to volunteer on behalf of federal campaigns. The donations did not act as an incentive to any person to vote for or against any Federal candidate. Nor did the donations act as an incentive to any person to make a contribution to or expenditure on behalf of a federal candidate or committee. The only connection that the donations had to a federal election was that they encouraged volunteer activity on behalf of federal candidates. Volunteer activity on behalf of candidates was exempt from regulation by FECA so long as it was "without compensation." 52 U.S.C. §30101(8)(B)(i) (formerly 2 U.S.C. §431(8)(B)(i)). Thus, the connection between these donations and a federal election was limited to activities that Congress explicitly left unregulated. The FEC concluded that the charitable donations were not for the purpose of influencing an election, and therefore were not expenditures. Mr. King could choose to make at least some donations to the Section 501(c)(3) organizations regardless of whether the performers appeared at any campaign events, and at least some of the performers would choose to volunteer their services to candidates regardless of whether Mr. King made	

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	any donation to any Section 501(c)(3) organization. In addition, each performer would select the campaign events at which he or she would perform, while Mr. King would choose the charitable organizations. The Advisory Opinion request did not indicate that any performer's appearance would depend on Mr. King making a donation. (f) The FEC also opined that Mr. King and the Foundation could publicize their activities provided that the Foundation was not incorporated and not making communications that were endorsements or independent expenditures to individuals outside its restricted class. Under Citizens United, absent coordination with a candidate or party, this aspect of the advisory opinion is no longer valid. See Preamble to Final Rules of Federal Election Commission on Independent Expenditures and Electioneering Communications by Corporations and Labor Organizations, 79 F.R. 62,797, 62,799-800 (Oct. 21, 2014) (FEC removed 11 C.F.R. §114.2(b)(2)(i) (prohibition on corporate and labor organization expenditures)). (g) The provisions of FECA and FEC regulations regarding coordinated communications and "disclaimer" requirements would not apply. Those provisions applied only to a "public communication" under 52 U.S.C. §30101(22) (formerly 2 U.S.C. §431(22)) and 11 C.F.R. §100.26, and none of the communications by Mr. King	

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	would be "public communications" under 52 U.S.C. §30101(22) (formerly 2 U.S.C. §431(22)) and 11 C.F.R. §100.26. See 11 C.F.R. §§109.21 and 110.11. (h) Mr. King's communications to the public through his own website would not be "public communications," and would not be "contributions" or "expenditures," because they would be exempt as individual Internet activity. 11 C.F.R. §§100.26, 100.94, and 100.155. The communications by the Foundation on its own website would likewise not be "public communications," and the Foundation would not make an expenditure or contribution by engaging in the website activity of listing the work done by the charity, the volunteers, and committees for which they volunteered, and the charitable donations made on their behalf. (i) If the Foundation was an incorporated entity, it would be generally prohibited from making endorsements beyond its restricted class and prohibited from making independent expenditures beyond its restricted class. See 52 U.S.C. §§30101(17) and 30118 (formerly 2 U.S.C. §§431(17) and 441b), 11 C.F.R. §§100.16 and 114.2(b)(2)(i). Under Citizens United, absent coordination with a candidate or party, this aspect of the advisory opinion is no longer valid. See 11 C.F.R. §114.4(c)(6)(i) ("A corporation or labor organization may endorse a candidate, and may	

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	communicate the endorsement to the restricted class and the general public. The Internal Revenue Code and regulations promulgated thereunder should be consulted regarding restrictions or prohibitions on endorsements by nonprofit corporations described in 26 U.S.C. 501(c)(3)."); Preamble to Final Rules of Federal Election Commission on Independent Expenditures and Electioneering Communications by Corporations and Labor Organizations, 79 F.R. 62,797, 62,799-800 (Oct. 21, 2014) (FEC removed 11 C.F.R. §114.2(b)(2)(i) (prohibition on corporate and labor organization expenditures)). 10. (a) In FEC Advisory Opinion 2003-5, the FEC addressed the scope of a federal candidate's or office-holder's permissible solicitations. The National Association of Home Builders of the United States ("NAHB"), a Code Section 501(c)(6) trade association, conducted a Voter Mobilization program. This program consisted of partisan communications to NAHB individual members and their families, and communications to the general public made to encourage an understanding of issues of significance to the home building industry. The program focused on the importance of individual participation in the American democratic process through voter registration, voting, and direct communication with candidates and elected officials. This activity was funded from the general operating accounts of NAHB, which did not limit their receipts to	

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	funds subject to FECA's amount limits and source prohibitions. (b) The FEC opined that a federal candidate or officeholder could attend and speak at an NAHB forum to discuss national policy issues of importance to the industry for which the NAHB invited only representatives of firms or individuals who made contributions to the Voter Mobilization program. When solicitations did not occur at the forum, the federal candidate's or officeholder's attendance and speaking were not a solicitation subject to FECA. In addition, the federal candidate or officeholder could be listed as a "featured guest" in pre-event invitations, as long as the invitations did not solicit nonfederal funds. (c) NAHB also held sporting events for its membership, such as golf events, to raise funds for its Voter Mobilization program. If NAHB's principal purpose was not to conduct election activities (voter registration and get-out-the-vote drives, and generic campaign activity), a federal candidate or officeholder could make a general solicitation of funds for NAHB without regard to FECA's source prohibitions and amount limitations, and regardless of whether NAHB periodically conducted election activities. However, the solicitation could not be used to obtain funds for use in an election or election activities. To	

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	the extent that the federal candidate or officeholder solicited funds for the Voter Mobilization program, the solicitations could be made only to individuals for no more than $20,000 per individual. (d) Since the solicitation rules for federal candidates or officeholders apply to Section 501(c) organizations, FEC Advisory Opinion 2003-5, which was addressed to a Section 501(c)(6) organization, also applies to Section 501(c)(3) and 501(c)(4) organizations. 11. A candidate who receives a contribution in accordance with FECA, and an individual who receives a contribution as support of the individual's activities as a federal officeholder, can use the funds for contributions to charitable organizations under Code Section 170(c). The charitable organization cannot convert the contributions to the personal use of the candidate or officeholder, and cannot pay the candidate or officeholder compensation before the organization expends the entire contribution. 52 U.S.C. §30114(a)-(b) (formerly 2 U.S.C. §439a(a)-(b)); 11 C.F.R. §§113.1(g) and 113.2. See also FEC Advisory Opinion 2011-2 (Senator Scott Brown's campaign committee's use of campaign funds to purchase copies of Senator's autobiography for distribution to financial contributors and political supporters	

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	permissible; publisher's contribution of Senator's royalties to a tax-exempt Section 170(c) organization also permissible; Senator cannot receive the royalties prior to contribution to Section 170(c) organization but can designate the organization); FEC Advisory Opinion 2006-18 (principal campaign committee of Representative Kay Granger can use its website, mailing list, and paid personnel to promote sales of Representative Granger's book and to organize, attend, and promote book-related events when Representative Granger will donate all royalties to two Section 501(c)(3) charitable organizations); FEC Advisory Opinion 2005-6 (former Congressman can contribute campaign funds to a Section 501(c)(3) organization that bears his name as long as neither the Congressman nor his family members receive compensation from the organization); FEC Advisory Opinion 2005-5 (United States Representative established a state committee to explore candidacy for Governor of Illinois; all funds raised by state committee complied with FECA limitations; state committee may use remaining funds to make donations to Section 501(c)(3) organizations that do not conduct election activity; such donations do not involve transfers, spending, or disbursements of funds in connection with a federal or nonfederal election and therefore do not fall within the restrictions of 52 U.S.C. §30125(e)(1) (formerly 2 U.S.C. §441i(e)(l))); FEC	

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	Advisory Opinion 2003-30 (United States Senator from Illinois announced he would not seek re-election in 2004; Senator's principal campaign committee had been fundraising since the 1998 general election; committee could contribute cash-on-hand to a Code Section 170(c) organization as long as contributions do not convert cash-on-hand to Senator's personal use); FEC Advisory Opinion 2003-18 (candidate for United States Senate was defeated in Republican primary; approximately $60,000 in refund checks that were returned to contributors were not cashed; the contributions were designated for the general election and could not be treated as permissible campaign funds eligible for contribution to charitable organizations under 11 C.F.R. §§102.9(e)(3), 110.1(b)(3)(i), and 110.2(b)(3)(i)). 12. Members of the House of Representatives and employees of the House of Representatives cannot accept honoraria, but can direct a payment in lieu of an honorarium not to exceed $2000 to a charitable organization under Code Section 170(c) from which neither the Member or employee, nor a parent, sibling, spouse, child, or dependent relative of the Member or employee, derives a financial benefit. House Rule XXV §1(c). The Rules of the Senate prohibit all honoraria, including payments in lieu of honoraria to charitable organizations. Senate Rule XXXVI; 5 U.S.C. Appendix 4 §501(b).	

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STATUTORY AND REGULATORY PROVISIONS ON CONTRIBUTIONS TO AND FUNDRAISING FOR SECTION 501(c)(3) ORGANIZATIONS		
	13. A federal candidate and officeholder who also serves as a national party committee officer can contribute his or her personal funds to organizations engaging in voter registration activity as defined in 11 C.F.R. §100.24(a)(2). The contributions to each organization cannot be in amounts that are so large, or in amounts that constitute such a substantial percentage of the organization's receipts, that the organization would be considered financed by the officeholder. FEC Advisory Opinion 2004-25.	

A GUIDE TO ELECTION YEAR ACTIVITIES OF SECTION 501(C)(3) AND 501(C)(4) ORGANIZATIONS

ACTIVITY	FEDERAL ELECTION CAMPAIGN ACT OF 1971, AS AMENDED ("FECA")	INTERNAL REVENUE CODE OF 1986, AS AMENDED ("I.R.C.")
REGULATORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	1. Communications by a corporation to the public on business and economic issues important to the corporation, and that are not electioneering communications, do not come within the prohibition on corporate contributions and expenditures. FEC Advisory Opinion 1984-57 (publication of article in corporate newsletter on pending legislation to prevent corporate takeovers not subject to FECA); MUR 1318 (newspaper advertisements paid for by corporation that are critical of an issue, but do not mention a candidate, campaign, or upcoming election, are not a contribution under FECA). Under Citizens United, regardless of whether these communications are electioneering communications, and as long as they are not coordinated with a candidate or political party, they are protected by the First Amendment. 2. A corporation, such as an incorporated Section 501(c)(4) organization, can form a separate segregated fund ("SSF"), otherwise known as a connected political action committee ("PAC"), for participation in federal campaigns. 52 U.S.C. §30118(b) (formerly 2 U.S.C. §441b(b)). The corporation is known as the PAC's connected organization. The connected organization creates a PAC when: (a) the connected organization's governing body adopts a resolution creating the PAC; (b) the connected organization appoints the persons to	1. (a) Participation or intervention in a campaign includes, without limitation, publication of written or printed statements, and the making of oral statements on behalf of or in opposition to a candidate for public office. Treas. Reg. §1.501(c)(3)-1(c)(3)(iii); PLR 201416011 (IRS revoked the Section 501(c)(3) status of The Patrick Henry Center for Individual Liberty; organization published a series of written statements favoring the candidacy of one candidate, and opposing the candidacies of other candidates); IRS News Release 2004-59, "Charities May Not Engage in Political Campaign Activities," April 28, 2004 ("These organizations cannot endorse any candidates, make donations to their campaigns, engage in fund raising, distribute statements, or become involved in any other activities that may be beneficial or detrimental to any candidate. Even activities that encourage people to vote for or against a particular candidate on the basis of nonpartisan criteria violate the political campaign prohibition of section 501(c)(3).") (available at http://www.irs.gov/newsroom/article/0,,id=122887,00.html). (b) A Section 501(c)(3) organization cannot establish a Section 527 political organization, e.g., a separate segregated fund or PAC, to engage in campaign activity. Treas. Reg. §1.527-6(g); Branch Ministries v. Rossotti, 211 F.3d 137 (D.C. Cir. 2000).

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	direct the PAC's operations; or (c) the connected organization begins to pay the PAC's administrative expenses. 11 C.F.R. §102.1(c). As discussed in Paragraphs 14 to 23 of the I.R.C. column, a Section 501(c)(3) organization can form a separately incorporated and affiliated Section 501(c)(4) organization, which can then create a PAC. 3. A Section 501(c)(4) organization that forms a PAC must be a membership organization. A membership organization is a corporation without capital stock that: (a) is composed of members, some or all of whom are vested with the power and authority to operate or administer the organization, pursuant to the organization's articles, bylaws, constitution, or other formal organizational documents; (b) expressly states the qualifications and requirements for membership in its articles, bylaws, constitution, or other formal organizational documents; (c) makes its articles, bylaws, constitution, or other formal organizational documents available to its members upon request; (d) expressly solicits people to become members;	(c) A Section 501(c)(3) organization becomes an action organization and loses its tax-exempt status as a Section 501(c)(3) organization if: (i) a substantial part of its activities is attempting to influence legislation; (ii) it participates or intervenes in any political campaign on behalf of or in opposition to any candidate for public office; or (iii) its main or primary objective or objectives (as distinguished from its incidental or secondary objectives) may be attained only by legislation or a defeat of proposed legislation, and it advocates, or campaigns for, the attainment of such main or primary objective or objectives as distinguished from engaging in nonpartisan analysis, study, or research, and making the results thereof available to the public. Treas. Reg. §1.501(c)(3)-1(c)(3)(i)-(iv). (d) Although an action organization cannot qualify for tax-exemption under Code Section 501(c)(3), it can qualify for tax-exemption as a social welfare organization under Code Section 501(c)(4) if it meets the requirements of Treas. Reg. §1.501(c)(4)-1(a). Treas. Reg. §1.501(c)(3)-1(c)(3)(v). (e) In New York v. Trump, Stipulation of Final Settlement, Index No. 451130/2018 (N.Y. Sup. Ct. Nov. 7, 2019), the parties stipulated to two instances of campaign intervention by the Donald J. Trump Foundation. (f) On January 26, 2016, Mr. Trump, then a candidate in the Republican primaries for nomination for President,

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	(e) expressly acknowledges the acceptance of membership, such as by sending a membership card or including the member's name on a membership newsletter list; and (f) is not organized primarily for the purpose of influencing the nomination for election, or election, of any individual to federal office. 11 C.F.R. §114.1(e)(1). 4. A member of a Section 501(c)(4) organization must affirmatively accept the organization's invitation to become a member, and satisfy one of (a), (b), or (c): (a) Have some significant financial attachment to the membership organization, such as a significant investment or ownership stake. (b) Pay membership dues at least annually of a specific amount predetermined by the organization. (c) Have a significant organizational attachment to the membership organization, which includes: affirmation of membership on at least an annual basis, and direct participatory rights in the governance of the organization. 11 C.F.R. §114.1(e)(2). (d) Participation in the organization's governance is usually satisfied by the right to elect board members. The members must have the right to vote for at least one	announced that he would conduct the Iowa Fundraiser on January 28, 2016, in lieu of participating in a televised debate featuring other Republican candidates. The Iowa Fundraiser was presented as the "Donald J. Trump Special Event for Veterans." The website for the Iowa Fundraiser, DonaldTrumpForVets.com, was developed by Campaign personnel and, with the agreement of the Foundation, featured the name of the Foundation at the top of the home page and informed visitors that "the Donald J. Trump Foundation is a 501(c)(3) nonprofit organization." (g) The Campaign planned, organized, and paid for the Iowa Fundraiser, with administrative assistance from the Foundation. The Campaign directed the timing, amounts, and recipients of the Foundation's grants to charitable organizations supporting military veterans. (h) The Iowa Fundraiser raised approximately $5.6 million in donations for veterans' groups, of which $2.823 million was contributed to the Foundation; the balance was contributed by donors directly to veterans' groups. At Campaign events in Iowa on January 30, 31, and February 1, 2016, Mr. Trump personally displayed presentation copies of Foundation checks to Iowa veterans' groups. On May 31, 2016, at a Campaign press conference, Mr. Trump announced the grants the Foundation made to veterans' groups with the proceeds of the Iowa Fundraiser and, on or

ACTIVITY	FEDERAL ELECTION CAMPAIGN ACT OF 1971, AS AMENDED ("FECA")	INTERNAL REVENUE CODE OF 1986, AS AMENDED ("I.R.C.")
REGULATORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	member of the highest governing body. Other participatory rights may qualify, such as the right to vote on policy questions or approve the annual budget. 11 C.F.R. §114.1(e)(2)(iii). (e) A person does not become a member by becoming a Facebook friend of the organization, or signing up for its e-mail list. 5. A Section 501(c)(4) organization can solicit contributions for its PAC from its members, and must inform members at the time of solicitation of the PAC's political purpose, and that the members can refuse to contribute without reprisal. 11 C.F.R. §§114.5(a)(3)-(4) and (g), and 114.7(a). The Section 501(c)(4) organization can suggest the amount members may wish to contribute, and must also state that a member may contribute more or less. The organization cannot specify a minimum contribution. 11 C.F.R. §114.5(a)(2). 6. The Section 501(c)(4) organization almost always wants to solicit funds for its PAC from the members of the Section 501(c)(3) organization. To make this solicitation, the Section 501(c)(4) organization and Section 501(c)(3) organization cannot be affiliated. 11 C.F.R. §114.7(c). A membership organization and its	about the same day, the Campaign posted on its website a chart identifying the grant recipients. (i) The second instance of campaign intervention was as follows. In 2013, Mr. Trump sent an instruction to donate $25,000 to Pamela Bondi's campaign fund called, "And Justice for All." The request was received by an accounts payable clerk. A clerk testified that she confused the political campaign with a Utah-based 501(c)(3) organization by the same name, and another administrative clerk sent the check to Pam Bondi's re-election campaign address in Florida on September 9, 2013. (j) The Foundation stated that when it filed its 2013 IRS Form 990-PF with the New York Charities Bureau as part of its annual New York State filing obligation, it was not aware of the issue and, accordingly, did not disclose the contribution to Ms. Bondi's re-election campaign. Further, the Foundation's outside accountants stated that they mistakenly identified the contribution on the Foundation's Form 990-PF tax return as being made to "Justice for All," a 501(c)(3) organization located in Kansas. (k) On or about March 23, 2016, the Foundation filed an IRS Form 4720 reporting the transaction and Mr. Trump paid the excise tax due under the Code and reimbursed $25,000 to the Foundation.

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REGULATORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	state or local chapters are deemed affiliated. Affiliation is also determined by weighing the following factors: (a) One organization has the ability to direct or participate in the other's governance through provisions of the governing documents or through formal or informal practices or procedures. (b) The organizations have common or overlapping membership, which indicates a formal or ongoing relationship between them. (c) The organizations have common or overlapping officers or employees, which indicates a formal or ongoing relationship. (d) One organization arranges for funds in a significant amount or on an ongoing basis to be provided to the other organization. (e) One organization or its agent had an active or significant role in the formation of the other. 11 C.F.R. §100.5(g)(4)(ii). 7. Neither a Section 501(c)(4) organization nor its PAC can solicit the general public for contributions, but the PAC can accept unsolicited contributions. 11 C.F.R. §114.5(i)-(j).	(l) The court then determined the appropriate remedy for the Iowa Fundraiser. Mr. Trump's fiduciary breaches included allowing his campaign to orchestrate the Fundraiser, allowing his campaign, instead of the Foundation, to direct distribution of the funds, and using the Fundraiser and distribution of the funds to further Mr. Trump's political campaign. The court found that the $2,823,000 raised by the Fundraiser was used for Mr. Trump's political campaign and disbursed by Mr. Trump's campaign staff, rather than by the Foundation, in violation of Sections 717 and 720 of the Not-for-Profit Corporation Law and Sections 8-1.4 and 8-1.8 of the Estates, Powers and Trusts Law. However, taking into consideration that the funds ultimately reached their intended destinations, charitable organizations supporting veterans, the court awarded damages on the breach of fiduciary duty/waste claim against Mr. Trump in the amount of $2,000,000, without interest, rather than the entire $2,823,000 sought by the Attorney General. Further, because the parties have agreed to dissolve the Foundation, the court directed Mr. Trump to pay the $2,000,000, which would have gone to the Foundation if it were still in existence, on a pro-rata basis to certain designated charities. New York v. Trump, Decision and Order on Petition, Index No. 451130/2018 (N.Y. Sup. Ct. Nov. 7, 2019). CANDIDATE FOR PUBLIC OFFICE

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REGULATORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	8. A Section 501(c)(4) organization and its PAC can use internal newsletters to solicit contributions as long as distribution is limited to the organization's members, executive or administrative personnel, and their families, and the newsletters do not become a public solicitation. 11 C.F.R. §114.7(a) and (e)-(h). Any solicitation on the Section 501(c)(4) organization's website should be limited to a members only area. Cf. FEC Advisory Opinion 2000-10 (trade association created members only, password protected portion of website for its PAC that contained a solicitation authorization form for members to download and print; arrangement was not a PAC solicitation subject to the disclaimer required by 52 U.S.C. §30120 (formerly 2 U.S.C. §441d)). 9. A Section 501(c)(4) organization can make unlimited express advocacy communications to its members, and can coordinate these communications with candidates. 52 U.S.C. §§30101(8)(B)(vi) and (9)(B)(iii) and 30118(b)(2)(A) (formerly 2 U.S.C. §§431(8)(B)(vi) and (9)(B)(iii) and 441b(b)(2)(A)); 11 C.F.R. §§100.134(a) and (e), 114.1(j), and 114.3(a). Similarly, a corporation can make unlimited express advocacy communications to its stockholders and executive or administrative personnel and their families, and can coordinate these communications with candidates. Id.	2. Under Treas. Reg. §1.501(c)(3)-1(c)(3)(iii), a "candidate for public office" is "an individual who offers himself, or is proposed by others, as a contestant for an elective public office, whether such office be national, State, or local." See also T.A.M. 200437040 (Sept. 10, 2004) ("One need not be a party nominee or run an organized political campaign to be a candidate for public office."). Unlike FECA, the Section 501(c)(3) prohibition is not limited to federal candidates and officeholders, and applies to state and local candidates. 3. "Public office" includes a state precinct committeeman position that was created by statute, has a fixed term, appears on an election ballot, is not occasional or contractual, and requires an oath of office. G.C.M. 39,811 (June 30, 1989). The article by Judith E. Kindell and John Francis Reilly, "Election Year Issues" in the IRS FY 2002 Exempt Organizations Continuing Professional Education Technical Instruction Program Textbook (the "2002 CPE Text"), states that these factors "should be taken into consideration in determining whether elections for political party positions are elections for public office." 2002 CPE Text, at 340. See also Treas. Reg. §1.527-2(d) ("The facts and circumstances of each case will determine whether a particular federal, State or local office is a 'public office.' Principles consistent with those found under §53.4946-1(g)(2) (relating to the definition of public office) will be applied."); Treas. Reg. §53.4946-1(g)(2) (public office turns

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REGULATORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	10. A Section 501(c)(4) organization, the Ob-Gyns for Women's Health, and its PAC, can solicit contributions from members of an affiliated Section 501(c)(3) organization, the American College of Obstetricians and Gynecologists. FEC Advisory Opinion 2005-3. For this arrangement to pass muster under Code Section 501(c)(3), the Section 501(c)(4) organization must solicit the members in their individual capacities, and without the assistance of the Section 501(c)(3) organization. 11. (a) A Section 501(c)(4) organization can match a member's or employee's contribution to the PAC with a contribution of an equal or lesser amount to a charitable organization as long as the member or employee does not receive a financial, tax, or other tangible benefit from the Section 501(c)(4) organization or the charitable organization. The matching contribution is a permissible solicitation expense under 52 U.S.C. §30118(a) and (b) (2) (C) (formerly 2 U.S.C. §441b(a) and (b)(2)(C)). It is not an impermissible means of exchanging the funds of the Section 501(c)(4) organization for voluntary contributions to the PAC, which is prohibited under 11 C.F.R. §114.5(b). Under this regulation, a contributor cannot be paid for his or her contributions to a PAC through a bonus, expense account, or other form or direct or indirect	on whether a significant part of the activities is the independent performance of policy making functions; whether the office is created by Congress, a State constitution, the State legislature, a municipality, or other governmental body pursuant to authority conferred by the Congress, State constitution, or State legislature; and whether the powers conferred by the office and the duties to be discharged by the office are defined by the Congress, State constitution, State legislature, or through legislative authority). 4. (a) A candidate for public office does not include ballot measures, bond measures, constitutional amendments, initiatives, and referenda. Treas. Reg. §1.501(c)(3)-1(c)(3)(ii)-(iii). These activities are considered legislation and are subject to the Section 501(c)(3) insubstantiality limitation on lobbying. See Paragraphs 42 and 44 below for a discussion of the insubstantiality limitation on lobbying. (b) A candidate for public office does not include a nominee for nonelective public office, such as a Supreme Court Justice, federal appellate or district court judge, or Cabinet Secretary. When the nominee's appointment requires the approval of a legislative body, the Section 501(c)(3) organization's activities in support of or opposition to the appointment are lobbying activities, and are subject to the Section 501(c)(3) insubstantiality limitation on lobbying. IRS Notice on Attempts to Influence Judicial Appointments

ACTIVITY	FEDERAL ELECTION CAMPAIGN ACT OF 1971, AS AMENDED ("FECA")	INTERNAL REVENUE CODE OF 1986, AS AMENDED ("I.R.C.")
REGULATORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	compensation. 11 C.F.R. §114.5(b)(1); FEC Advisory Opinions 2003-4, 1994-7, 1994-6, 1994-3, 1989-9, 1989-7, 1988-48, 1987-18, and 1986-44. (b) The Section 501(c)(4) organization can allow its members or employees to choose the charity, choose from a list of five to ten charities, or choose from a list of four charities with a default designated charity if the member or employee does not choose from the list. Id. See also FEC Advisory Opinion 2015-2 (Grand Trunk Western Railroad and Illinois Central Railroad Company made donations to the charity chosen by the contributor to a connected PAC in an amount equal to the contributor's contribution to the PAC; a contributor could designate the Taylor Birks Foundation, a Canadian charity headquartered in Montreal and a registered charity under Canadian law; the Foundation's receipt of donations did not implicate FECA's prohibition on foreign nationals making any contribution in connection with an election under 52 U.S.C. §30121(a) and 11 C.F.R. §110.20(i)); FEC Advisory Opinion 2003-39 (member of Code Section 501(c)(6) trade association, which acted as a collecting agent for the association's PAC, matched contributions to the PAC from the member's restricted class by contributing to any Section 501(c)(3) organization of the contributor's choice, dollar for dollar; matching	by Exempt Organizations (July 21, 2005) ("Attempts to influence Senate confirmation of a federal judicial appointment are not considered campaign intervention, which is specifically forbidden by section 501(c)(3). However, because attempts to influence Senate confirmation are considered lobbying, they are subject to the rules on lobbying: • Section 501(c)(3) organizations may engage in lobbying in furtherance of their exempt purposes. • The lobbying may not be a substantial part of the organization's activities.") (available at http://www.irs.gov/charities/article/0,,id=1413272,00.html); IRS Notice 88-76, 1988-2 C.B. 392; G.C.M. 39,694 (Feb. 1, 1988). See Paragraphs 42 and 44 below for a discussion of the insubstantiality limitation on lobbying. (c) A Section 501(c)(3) organization's activities in support of or in opposition to a nominee for nonelective public office are an exempt function under Section 527(e)(2), and the organization's expenditures on these activities are subject to tax under Section 527(f). For a Section 501(c)(3) organization to avoid the tax, it must form a separate segregated fund, or PAC, to make the expenditures. The PAC, as a separate legal organization, is subject to the tax. The organization's transfers of political contributions to the PAC made by third-parties are not exempt function expenditures by the transferor organization subject to the tax. The transferor organization must make the transfers promptly and without an intermediary under procedures

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REGULATORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	contributions were a permissible payment by collecting agent of costs incurred in soliciting and transmitting contributions to the PAC under 11 C.F.R. §102.6(c)(2)(i)). See Paragraph 23 of the I.R.C. column for the IRS position on the tax treatment of a matching program. 12. (a) In FEC Advisory Opinion 2003-33, the FEC approved Anheuser-Busch Companies, Inc.'s Charitable Matching Program and its United Way Program working in tandem together. (b) Under the Charitable Matching Program, if an eligible employee makes a contribution to Anheuser-Busch's PAC, Anheuser-Busch matches that contribution, dollar for dollar, by making a donation to a charity in the same amount as the contribution to the PAC and in the name of the contributing employee. Other than the requirement that the charity be exempt from federal income taxes under Section 501(c)(3), the contributing employee is free to choose the charity to which the matching donation is to be made. (c) Under the United Way Program, Anheuser-Busch provides prizes to employees who donate a certain amount to the United Way. If an employee donates $100 or more, the employee is provided with a beer	prescribed by federal or state campaign finance laws after the contributions are initially received by the transferor organization from third-parties. I.R.C. §527(f)(3); Treas. Reg. §1.527-6(e)-(f); S. Rep. No. 93-1357, 93d Cong., 2d Sess. 29 (1974), reprinted in 1974 U.S. Code Cong. & Admin. News 7478, 7519; John Francis Reilly & Barbara A. Braig Allen, "Political Campaign and Lobbying Activities of IRC 501(c)(4), (c)(5), and (c)(6) Organizations," IRS FY 2003 Exempt Organizations Continuing Professional Education Technical Instruction Program Textbook, at L-13 to L-14 (the "2003 CPE Text"). See Paragraphs 28 to 30 below for a discussion of the Section 527(f) tax. 5. A candidate likely includes an incumbent until he or she publicly announces his or her decision not to seek re-election. 6. Does the phrase "proposed by others" in Treas. Reg. §1.501(c)(3)-1(c)(3)(iii) include a person who has not yet declared his or her candidacy, but whose potential candidacy is the subject of public debate or speculation? Are the formation of an exploratory or testing-the-waters committee, and a person's public acknowledgment thereof, sufficient? Does a person's control over the exploratory or testing-the-waters committee preclude a finding of being "proposed by others," or does the publicity resulting from the committee's

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REGULATORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	ticket entitling him or her to a free case of beer, which typically costs Anheuser-Busch no more than $10. An employee who donates a certain percentage of his or her salary to the United Way is considered a "Fair Share" participant, and receives an item such as a beer stein, plaque, or wall print, which costs Anheuser-Busch between $30 and $52. (d) Anheuser-Busch started to count the matching contributions made to the United Way, along with the employee's direct contributions to the United Way, toward the prize thresholds. Thus, an employee who makes a contribution to the PAC and designates the United Way under the Charitable Matching Contribution Program receives two benefits: (i) a matching contribution in the employee's name to the United Way; and (ii) a prize under the United Way Program. (e) The FEC opined that given under the Charitable Matching Program no individual contributor to the PAC would receive a financial, tax, or other tangible benefit from Anheuser-Busch or the recipient charities, there was no exchange of corporate treasury monies for voluntary contributions to the PAC. (f) The FEC also opined that the prizes under the United Way Program were permissible "so long as they are not disproportionately valuable in relation to the	formation trump this control? See Joint Committee on Taxation, Present Law and Background Relating to the Federal Tax Treatment of Political Campaign and Lobbying Activities of Tax-Exempt Organizations (JCX-7-22), at 7 (April 29, 2022) ("There is no bright-line test for determining the precise moment when an individual becomes a candidate for purposes of the section 501(c)(3) political campaign prohibition."); cf. Treas. Reg. §1.527-2(c)(1) (an organization's activities in furtherance of a person's election to office are for an exempt function; "The individual does not have to be an announced candidate for the office. Furthermore, the fact that an individual never becomes a candidate is not crucial in determining whether an organization is engaging in an exempt function"). 7. In T.A.M. 9130008 (April 16, 1991), the IRS found that a person who had not yet announced his candidacy was a candidate when his campaign committee published material regarding his record, and referred to his "prospective candidacy." POLITICAL ACTIVITY SEPARATE FROM OR AS PART OF A SECTION 501(c)(3) ORGANIZATION'S EXEMPT PURPOSE 8. In the following situations the IRS has taken the position that when political activity is sufficiently separate from the Section 501(c)(3) organization's tax-exempt functions, or is otherwise a permissible part of a Section 501(c)(3)

ACTIVITY	FEDERAL ELECTION CAMPAIGN ACT OF 1971, AS AMENDED ("FECA")	INTERNAL REVENUE CODE OF 1986, AS AMENDED ("I.R.C.")
REGULATORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	contributions generated." The FEC regulations provide that a "reasonable practice to follow is for the separate segregated fund to reimburse the corporation or labor organization for costs which exceed one-third of the money contributed." 11 C.F.R. §114.5(b)(2); see also FEC Advisory Opinion 1981-40. (g) The FEC concluded that the two benefits that an employee received would not run afoul of these rules. First, the additional benefit to the employee represented by the token gift or prize, of beer, a beer stein, a plaque or a wall print would not alter the nature of the charitable matching contributions as to make it a tangible benefit to the employee. Second, "if receipt of a token gift or prize of less than one-third the value of the contribution, standing alone, does not amount to the exchange of corporate treasury money for voluntary contributions, the Commission does not believe that such a token gift or prize, when combined with the receipt of a charitable matching donation, would amount to the exchange of corporate treasury money for voluntary contributions." 13. (a) In MUR 6873 (Wal-Mart Stores, Inc.), by a vote of 4-2, the FEC dismissed a complaint against Wal-Mart Stores, Inc. ("Wal-Mart") and Wal-Mart Stores Inc. PAC for Responsible Government ("WALPAC"). The FEC's reasoning was set forth in the Factual and Legal	organization's tax-exempt functions, the activity is not prohibited campaign intervention: (a) In PLR 201127013, a Section 501(c)(3) comprehensive, regional, integrated health care system will participate in a separate nonprofit membership corporation without capital stock, the primary purpose of which is to conduct the federal and state lobbying of the system's government affairs department. (i) The corporation will be a Section 501(c)(4) social welfare organization, and will have two classes of membership: voting and nonvoting. The system will be the sole voting member with the power to elect the board of directors and approve the budget. The system's tax-exempt subsidiaries will be the nonvoting members. All members will pay nominal membership dues to the corporation. (ii) The corporation will have eleven members of its board of directors, including its president, secretary, and treasurer. A majority of the corporation's board will consist of members of the system's or tax-exempt subsidiaries' board of directors, officers, or employees. The system's treasurer or assistant treasurer will serve as the corporation's treasurer. (iii) The system will allocate the cost of any shared or leased employees, goods, services, or facilities between the

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REGULATORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	Analysis of its Office of General Counsel (Dec. 21, 2015). (b) For each dollar that an employee or associate of Wal-Mart contributed to WALPAC, Wal-Mart made a $2 charitable contribution to Wal-Mart Associates in Critical Need a/k/a Associates in Critical Need Trust ("ACNT"), a Section 501(c)(3) charitable organization. Since its inception in 2001, ACNT made over 110,000 grants totaling over $100 million to Wal-Mart employees who experienced a demonstrable economic hardship, such as serious medical illness, death of an eligible dependent, natural disaster, or homelessness. Grants were capped at $1,500 during an employee's career with Wal-Mart. (c) In 2004 Wal-Mart began soliciting its restricted class employees to contribute to WALPAC by offering to double the amount of the employee contributions to WALPAC in corporate donations to ACNT. Only a small proportion of WALPAC contributors received ACNT grants. For example, in fiscal year 2014, ACNT awarded 15,740 grants to Wal-Mart employees, of which only thirty-nine grants were awarded to individuals who contributed to WALPAC. In addition, the ACNT grant request form did not question whether the applying associate contributes to WALPAC, and	corporation and the system and its tax-exempt subsidiaries. The fair value of shared or leased employees, goods, or facilities will be reimbursed to the entity incurring the direct cost. (iv) The corporation will form a federal political action committee and a state political action committee under Code Section 527. Prior to conducting any activities, the federal PAC's and state PAC's initial boards and officers will be appointed by the corporation's chairperson. A majority of both the federal PAC's and state PAC's board of directors will consist of members of the corporation's board of directors. The corporation's treasurer will serve as treasurer of the federal PAC and the state PAC. (v) The federal PAC's board will have exclusive general supervision and control over the affairs and funds of the federal PAC. The federal PAC's board will determine the policies and procedures for collection and payment of funds to the candidates and political committees that the federal PAC will support, and the amount of all budgeted allocations for expenditures by the federal PAC. (vi) The state PAC's board will have exclusive general supervision and control over the affairs and funds of the state PAC. The state PAC's board will determine the policies and procedures for collection and payment of funds to the candidates and political committees that the state PAC

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REGULATORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	there is no reference to WALPAC at any stage of the application process. (d) The Factual and Legal Analysis stated that under the FEC's prior Advisory Opinions, a corporation may offer to match the voluntary political contributions of employees with charitable donations, so long as the individual contributor to the PAC does not receive a financial, tax, or other tangible benefit from either the corporation or the recipient charities, thus avoiding an exchange of corporate treasury monies for voluntary contributions. 11 C.F.R. §114.5(b). The cost of the matching program was a permissible solicitation expense under 52 U.S.C. §30118(a) and (b)(2) (formerly 2 U.S.C. §441b(a) and (b)(2)(C)). (e) Although some WALPAC donors received ACNT grants, there was no correlation between the amount they contributed and the amount they received in grant funds to cover hardship circumstances. Under ACNT's Program Guidelines, grants were available to both hourly associates, who were not members of the restricted class and were not solicited as part of the matching program, as well as salaried members of management. The Guidelines do not include making contributions to WALPAC as a factor in awarding grants. Thus, receiving a grant from ACNT was	will support, and the amount of all budgeted allocations for expenditures by the state PAC. (vii) No assets or funds of the system or its tax-exempt subsidiaries will be used for the establishment, administration, or solicitations of contributions to the PACs. Neither the system nor its tax-exempt subsidiaries will make contributions to the PACs. The corporation and the PACs will maintain separate bank accounts, books, records, and prepare separate financial statements, reports, and tax returns. Any leasing or sharing of employees, goods, services, or facilities between the system or its tax-exempt subsidiaries with the corporation or the PACs will be conducted at arm's length and there will be a reasonable allocation of costs. The corporation and the PACs will each have separate letterhead, address, telephone number, and Internet address. (viii) Solicitations for contributions to the PACs will be made by the PACs. There will be no joint fundraising, postal, or electronic mailings or events conducted between the system and its tax-exempt subsidiaries and the PACs. The PACs will not solicit any contributions or transact any other business using the system's or tax-exempt subsidiaries' names, and will not use mailings signed by the system's or tax-exempt subsidiaries' employees, officers, directors, or trustees in an official capacity. Neither the system nor its tax-exempt subsidiaries will distribute any

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REGULATORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	unrelated to whether the recipient contributed to WALPAC. (f) The FEC acknowledged that an individual in Wal-Mart's restricted class who wished to make a donation to ACNT would be able to halve the out-of-pocket expense of making a charitable contribution of a particular size, up to the amount of the maximum permissible PAC contribution. However, "reducing an individual's burden with respect to making a donation of a particular size to a particular charity, standing alone, does not constitute indirect 'compensation' to the individual. Hence it would not result in a payment to the individual contributor 'through a bonus, expense account, or other form of direct or indirect compensation,' as contemplated" under 11 C.F.R. §114.5(b)(1). (g) In addition, since the record showed that making a contribution to WALPAC played no part in determining eligibility for an ACNT critical need grant, "it appears that doubling the amount of a contribution to WALPAC as a charitable donation to ACNT merely increases the permissible solicitation expenses of Wal-Mart in connection with its management of the program." (footnote omitted).	material produced or prepared by the PACs. Neither the system nor its tax-exempt subsidiaries will provide mailing lists to the PACs without making them available to other Section 527 organizations on an equal basis. (ix) The system and its tax-exempt subsidiaries will offer a payroll deduction plan to their employees, pursuant to which they can elect to have a voluntary contributions to any Section 527 organization deducted automatically and forwarded to that organization. (x) No political organization will solicit payroll deductions using the system's or tax-exempt subsidiaries' facilities or postal or electronic mailings. The system and its tax-exempt subsidiaries will not distribute any publication, mass media advertisement, or programs encouraging payroll deduction to any political organization. All employees will be required to voluntarily consent in writing to the payroll deduction. All transfers of employee payroll deductions to political organizations will be made promptly upon receipt by the system and its tax-exempt subsidiaries. (xi) The IRS ruled that the establishment and operation of the PACs do not constitute participation or intervention in a political campaign by a Section 501(c)(3) organization. A Section 501(c)(3) organization may establish and control a Section 501(c)(4) organization to conduct certain activities allowable under Code Section 501(c)(4), but not allowable

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REGULATORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	(h) Finally, even if the FEC were to construe the benefit of a two-for-one matching contribution as a form of compensation to the donor, the likelihood of any participating donor being selected to receive an ACNT grant would be so minimal as to be de minimis. (i) The FEC concluded that Wal-Mart's donations to ACNT under the WALPAC matching program qualified as permissible solicitation expenses, and that whatever indirect financial benefit a particular participant may receive as a result of participating in the program would be de minimis and did not warrant further enforcement proceedings. See generally Renee Dudley, "Wal-Mart to HP Reap Worker Political Donations Through Charities," Bloomberg.com (Dec. 23, 2013) ("U.S. companies, forbidden to give money directly to political action committees, are taking advantage of controversial federal rules allowing them to ask employees to do it for them in exchange for matching charitable donations. It's legal and gives businesses from Wal-Mart Stores Inc. to Coca-Cola Co. to Hewlett-Packard Co. a way to fund their PACs, which direct money to political candidates. The matching contributions provide an incentive for employees, most of them managers, to contribute to the PAC. . . . In an interview, former FEC chairman Scott Thomas said the exchange flouts the	under Code Section 501(c)(3). The organizations must be separately incorporated and keep adequate records to show that tax-deductible contributions are not used to pay for nonexempt purposes under Code Section 501(c)(3), including lobbying. In addition, the Section 501(c)(3) organization and the Section 501(c)(4) organization must operate independently of each other, and each organization must separately administer its own affairs. Regan v. Taxation With Representation of Washington, 461 U.S. 540 (1983) (dual structure of Section 501(c)(4) organization for lobbying and Section 501(c)(3) organization for other activities was permissible; two organizations must be separately incorporated and keep adequate records to show that tax-deductible contributions are not used to pay for lobbying); Moline Properties v. Commissioner, 319 U.S. 436 (1943) (each corporation is a separate taxable entity for federal income tax purposes if the corporation is formed for valid business purposes, and is not a sham, an agency, or instrumentality). In addition, the establishment and operation of the PAC must not be the Section 501(c)(4) organization's primary activity. PLR 201127013. (xii) The IRS also ruled that the system's establishment and operation of a voluntary payroll deduction plan for employees will not result in intervention in a political campaign. PLR 201127013. The voluntary payroll deduction is not attributable to the system, but to the employees in their personal capacities. But cf. T.A.M.

ACTIVITY	FEDERAL ELECTION CAMPAIGN ACT OF 1971, AS AMENDED ("FECA")	INTERNAL REVENUE CODE OF 1986, AS AMENDED ("I.R.C.")
REGULATORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	spirit of campaign-finance laws, which forbid companies from reimbursing for donations, including through a bonus or 'other form of direct or indirect compensation.' 'It was too close to the line,' said Thomas, explaining his rationale for opposing the practice during his 20 years at the FEC. 'It struck me as offering a chunk of money' to PAC donors. Judith Ingram, an FEC spokeswoman, declined to comment.") (available at www.bloomberg.com/news/print/2013-12-23/wal-mart-to-hp-reap-worker-political-donations-through-charities.html). 14. The maximum contribution that an individual can give to a PAC is $5,000 per calendar year. This amount is not indexed for cost-of-living adjustments. 52 U.S.C. §30116(a)(1)(C) (formerly 2 U.S.C. §441a(a)(1)(C)). The $5,000 annual limit is subject to constitutional challenge on two grounds. First, the $5,000 annual limit has been in effect since 1940. According to the Bureau of Labor Statistics, $5,000 in 1940 had the purchasing power of $77,000 in 2010. Thus, the $5,000 is not calibrated to any current threat of corruption. In EMILY's List v. FEC, 581 F.3d 1, 21 (D.C. Cir. 2009) (Kavanaugh, J.), one of the reasons why the court found that the FEC's rules for allocation of funds by nonconnected political committees to finance activities that influence both federal and nonfederal elections were unduly burdensome was the low $5,000 limit. Second,	200446033 (June 15, 2004) (Section 501(c)(3) parent corporation of corporations providing health care services; parent belonged to a trade association that maintained a PAC to support candidates of all political parties for state legislative positions and offices; parent made available PAC's payroll deduction plan for its employees to contribute, and conducted meetings to discuss the PAC and payroll deductions; parent's CEO appeared in a video explaining the impact of political input on the hospital industry, and video was shown at meetings; recipient PAC was not of the employees' choosing, but was selected by and endorsed by employer; parent violated prohibition on campaign intervention). (b) A Section 501(c)(3) health plan's administration of a payroll deduction plan of collecting political contributions from the health plan's employees, and remitting the contributions to the employees' unions for transfer to union sponsored PACs, did not violate the prohibition against campaign intervention. PLR 200151060. "This is not a case of a 501(c)(3) organization establishing a PAC, which is prohibited under section 501(c)(3) of the Code. Health Plan did not select the beneficiary PACs and has no control or influence over them. The PACs are sponsored by the Unions, and on labor issues would likely have political interests differing from those of Health Plan. Thus, there is no identity of interests between Health Plan and the PACs. Nor did Health Plan seek to establish the payroll deduction

ACTIVITY	FEDERAL ELECTION CAMPAIGN ACT OF 1971, AS AMENDED ("FECA")	INTERNAL REVENUE CODE OF 1986, AS AMENDED ("I.R.C.")
REGULATORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	the $5,000 limit is not indexed for inflation. In Randall v. Sorrell, 548 U.S. 230, 238-40 (2006), one of the reasons why the Court struck down Vermont's contribution limits was the failure to index the limits for inflation. In addition, the limit on contributions to PACs was originally meant to be greater than the limit on contributions to candidates. In the absence of indexing for inflation for contributions to PACs, the limit on contributions to candidates, which are indexed for inflation, will become greater than the limit on contributions to PACs. See Allison R. Hayward, "What Changes Do Recent Supreme Court Decisions Require for Federal Campaign Finance Statutes and Regulations?," 44 Indiana Law Review 285, 288-89 (2010).	plan. Instead, the facts show that the plan is a benefit sought by the Unions. Health Plan is legally required to bargain in good faith regarding the establishment of such plan. While Health Plan understandably approached the matter with caution for fear of noncompliance with the federal tax laws, we find that it has developed a reasonable approach to accommodating the interests of its employees that complies with the requirements of section 501(c)(3) of the Code. We note that Health Plan has a legitimate interest in providing benefits to its employees in order to attract and retain a qualified workforce." Id. (c) A Section 501(c)(3) organization can adopt a voluntary payroll deduction plan that allows employees to direct a portion of their wages to their unions' PACs long as the organization: (i) only transfers the funds earmarked by the employees to the PAC chosen by the employees; (ii) does not have any role in the PAC's management or governance, such as the choice of candidates or parties to be supported or opposed; (iii) ensures that its name is not used or otherwise acknowledged in any contributions made by the PAC; (iv) is reimbursed for any costs incurred by the organization; (v) ensures that employees do not associate the PAC with the organization; and (vi) does not allow employees to participate in PAC activities during work hours other than the transfer of funds under (i).

ACTIVITY	FEDERAL ELECTION CAMPAIGN ACT OF 1971, AS AMENDED ("FECA")	INTERNAL REVENUE CODE OF 1986, AS AMENDED ("I.R.C.")
REGULATORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
		See also Michigan State AFL-CIO v. Schuette, 847 F.3d 800, 805, 806 (6th Cir. 2017) (Michigan Campaign Finance Act prohibited expenditure by corporations and unions to pay the administrative expenses of operating a payroll deduction program unless the deductions go the corporation's or union's own political action committee, or a political action committee established by a nonprofit corporation of which the corporation or union is a member; "[T]he elimination of a PAC check-off opportunity does not amount to a restriction on speech and thus does not abridge the speech rights of unions hoping to receive check-off donations;" "Michigan's law . . . prevents one distinct entity from subsidizing another entity's speech. It does not limit the amount of money unions can raise or spend. And it does not specify the subjects or organizations to which they can donate or on which they can spend"), petition for rehearing en banc denied (6th Cir. April 6, 2017). (d) A university can provide facilities and faculty advisors to a student newspaper, and also provide financial support for publication costs without engaging in campaign intervention. The newspaper publishes editorials on issues concerning candidates and endorses candidates. The arrangement is permissible as long as the newspaper is operated in a customary journalistic manner, the students determine editorial policy without university intervention, and the newspaper publishes a disclaimer that the editorial

ACTIVITY	FEDERAL ELECTION CAMPAIGN ACT OF 1971, AS AMENDED ("FECA")	INTERNAL REVENUE CODE OF 1986, AS AMENDED ("I.R.C.")
REGULATORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
		views are those of the students and not the university. Rev. Rul. 72-513, 1972-2 C.B. 246; see also 2002 CPE Text, at 365 ("The actions of students generally are not attributed to an educational institution unless they are undertaken at the direction of and with authorization of a school official."). (e) As part of a political science course, a university could require a student to provide services to the campaign of a candidate of the student's choice. The university did not control the student's campaign work, and was reimbursed or paid for any services or facilities provided to the student for use in the campaign. Rev. Rul. 72-512, 1972-2 C.B. 246. As a matter of prudence, a Section 501(c)(3) educational institution may wish to offer courses with this requirement only as an elective. The IRS subsequently pointed out that had "the faculty members specified the candidates on whose behalf the students should campaign, the actions of the students would be attributable to the university since the faculty members act with the authorization of the university in teaching classes." 2002 CPE Text, at 365. See also FEC Advisory Opinion 2015-14 (DePauw University, a Section 501(c)(3) organization, provided academic credit, and a stipend for travel and basic subsistence expenses, to a student who was offered an eight week unpaid internship in the summer of 2015 with Hillary Clinton's Presidential campaign committee; under FECA, academic credit did not constitute prohibited compensation

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REGULATORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
		to the student, and stipend did not constitute a prohibited contribution by the University to the campaign) (opinion discussed in further detail in Paragraph 2 of the FECA column for "Campaign Activities of Section 501(c)(3) Organization's Directors, Officers, and Employees"). See generally Statement of Frances R. Hill, Professor of Law, University of Miami School of Law, Hearing on Protecting the Free Exchange of Ideas on College Campuses, Committee on Ways and Means Subcommittee on Oversight of the United States House of Representatives, at 3 (March 2, 2016) ("In general, students are more likely to be acting in their private, personal capacity, while senior officials of a university will be acting in their official capacities or at least appear to be doing so. Issues involving students are likely to center on their access to university resources, while issues involving university officials are likely to center on the greater scope of their official role and thus relatively smaller role for actions taken in their private capacities."). (f) Can a professor at a private university operate a blog that supports and attacks candidates? Must the professor post a disclaimer that the blog contains only his or her views, and not the university's? (g) University X is a section 501(c)(3) organization. X publishes an alumni newsletter on a regular basis.

ACTIVITY	FEDERAL ELECTION CAMPAIGN ACT OF 1971, AS AMENDED ("FECA")	INTERNAL REVENUE CODE OF 1986, AS AMENDED ("I.R.C.")
REGULATORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
		Individual alumni are invited to send in updates about themselves that are printed in each edition. After receiving an update letter from Alumnus Q, X prints the following: "Alumnus Q, class of 'XX is running for mayor of Metropolis." The newsletter does not contain any reference to this election or to Alumnus Q's candidacy other than this statement of fact. University X has not intervened in a political campaign. IRS Fact Sheet 2006-17, Example 12 (Feb. 2006). The IRS also used this example in Rev. Rul. 2007-41, Situation 12, 2007-1 C.B. 1421, 1424. (h) A Section 501(c)(3) mail-bundling organization formed to provide employment opportunities for the developmentally disabled can provide mailing services to political campaigns. PLR 9152039. 9. (a) In contrast to the independence of operations and separate administration of the Section 501(c)(3) organization and Section 501(c)(4) organization in PLR 201127013 (discussed in Paragraph 8(a) above), a Section 501(c)(3) organization's control over a for-profit subsidiary and its PAC led the IRS to find impermissible political intervention by the Section 501(c)(3) organization in PLR 202005020. (b) In PLR 202005020, a Section 501(c)(3) organization is the Parent of a healthcare system. It provides management, consulting, and other services to its related healthcare facilities and educational institutions. The Parent is the sole

ACTIVITY	FEDERAL ELECTION CAMPAIGN ACT OF 1971, AS AMENDED ("FECA")	INTERNAL REVENUE CODE OF 1986, AS AMENDED ("I.R.C.")
REGULATORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
		or partial direct or indirect member of a number of Section 501(c)(3) organizations that own and operate hospitals, nursing homes, and provide other healthcare services ("System Section 501(c)(3) Subsidiaries"). The Parent is also the sole shareholder of Subsidiary, a for-profit corporation that holds limited liability company interests in two joint ventures and is the single member of an LLC that provides real estate rental management services primarily for affiliated Section 501(c)(3) hospitals. (c) The Parent, as Subsidiary's sole shareholder, elects all of Subsidiary's directors and may remove any director with or without cause. The Parent also may elect or appoint Subsidiary's officers and assistant officers or permit the directors of Subsidiary to do so. Subsidiary does not have any employees who are not also employees of the Parent. (d) Subsidiary will establish and operate a political action committee under Section 527. Subsidiary will select the PAC's board of directors, which in turn will select the PAC's officers. Directors and officers of the PAC may serve concurrently as directors or officers of Subsidiary, and as directors, officers, or employees of the Parent. The PAC will not have any of its own employees. (e) Subsidiary and PAC will solicit voluntary contributions to the PAC from employees of Subsidiary, Parent, and System Section 501(c)(3) Subsidiaries. Parent's employees

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REGULATORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
		will engage in fundraising activities on behalf of Subsidiary in their capacities as service providers to Subsidiary pursuant to a resource-sharing agreement (the "Agreement"). Only directors, officers, or common law employees of Subsidiary will make oral or written solicitations for contributions to the PAC, and they will make clear that they are not acting on behalf of Parent in making the solicitations. Parent states that it will not coordinate with Subsidiary or PAC with respect to fundraising efforts or distribution of informational materials or other activities. Parent will charge Subsidiary and PAC fair market value for use of the mailing lists of its employees and the employees of System Section 501(c)(3) Subsidiaries. (f) Parent's board of directors will adopt a resolution prohibiting the board from any involvement in the PAC. Parent represents that the board resolution will also prohibit any director, officer, or employee of Parent from any involvement in PAC on behalf of Parent or in an official Parent capacity. (g) Under the Agreement, Parent will provide management, administrative, and corporate services, and make available facilities and equipment to Subsidiary and Subsidiary's subsidiaries identified on a schedule, which will include the PAC ("group members"). Parent represents that to the extent that a director, officer, or employee of Parent also serves as a director or officer of Subsidiary or PAC, that

ACTIVITY	FEDERAL ELECTION CAMPAIGN ACT OF 1971, AS AMENDED ("FECA")	INTERNAL REVENUE CODE OF 1986, AS AMENDED ("I.R.C.")
REGULATORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
		individual will not take any action with respect to Subsidiary or PAC on behalf of Parent or in an official Parent capacity. Parent's directors, officers, and employees will also track all time spent providing services to Subsidiary and PAC so that the time is appropriately allocated to Subsidiary. The Agreement also provides that Subsidiary shall have dominion and control over the services and facilities whiles being used by Subsidiary, and that employees of Parent who provide services or facilities to Subsidiary will be considered employees of Subsidiary while providing services or facilities to Subsidiary. Parent reserves the right under the Agreement to subcontract any of the services that it is required to provide to Subsidiary or a group member, and remains responsible for the performance of services. (h) Under the Agreement, Subsidiary and each group member will bear and pay to Parent its share of Net Costs, which is the sum of Direct Costs and Indirect Costs. Direct Costs are the sum of all external and internal direct costs incurred by Parent directly attributable to a particular service and facility provided to Subsidiary or a group member. Indirect Costs means all external and internal costs incurred by Parent that cannot be directly attributed to a particular service or facility provided to Subsidiary or a group member, which is charged at a rate of 20% of all Direct Costs. Parent represents that 20% represents the percentage

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REGULATORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
		of management and general expenses generally incurred by Parent as a percentage of its total costs. (i) The IRS ruled that Parent's provision of its mailing list of employees to Subsidiary and PAC for the purpose of soliciting funds for PAC constitutes prohibited political campaign intervention. The IRS relied on Situation 18 of Rev. Rul. 2007-41, which has the following facts. Theater L, a Section 501(c)(3) organization, maintains a mailing list of all of its subscribers and contributors, but has never rented its mailing list to a third-party. The organization is approached by the campaign committee of a candidate who supports increased funding for the arts. The campaign committee offers to rent the mailing list for a fee that is comparable to fees charged by other similar organizations. Theater L rents its mailing list to the campaign committee, but declines similar requests from campaign committees of other candidates. Theater L has intervened in a political campaign. (j) Parent's mailing list of its employees would be a specifically tailored compilation of information about its employees that Subsidiary and PAC require to comply with federal campaign finance law for connected PACs to solicit campaign contribution from Parent's employees. Parent would provide and continuously update this specialized list of names and addresses of its employees and the employees of the System Section 501(c)(3) Subsidiaries, and identify

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REGULATORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
		which of the employees are within the definition of executive or administrative personnel, whom Subsidiary and PAC would be permitted to solicit contributions from under federal election laws more frequently than twice per year. Parent's assembly and provision of a mailing list for the Subsidiary and PAC has as its sole purpose to assist Subsidiary and PAC in soliciting campaign contributions from Parent's employees. (k) The Agreement to provide services and facilities also showed prohibited political campaign intervention by Parent. Parent reserved the right to subcontract any of the services, and remained responsible for the performance of the services. The Agreement provided no guardrails or limitations with respect to services that might be inconsistent with Parent's exempt purpose under Section 501(c)(3). In addition, the Agreement did not show how the employees of Parent providing services to Subsidiary and the group members will in fact be providing such services as employees of Subsidiary under the direction and control of Subsidiary. The majority of Subsidiary's board of directors and all employees of Subsidiary are employees of Parent and there is no identified separation of roles in directing and controlling their performance of services. Accordingly, services provided under the Agreement to carry out the activities of the PAC are provided by Parent's employees under an agreement for Parent to provide such services.

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REGULATORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
		(l) Regardless of reimbursement by Subsidiary and PAC of Parent's Direct and Indirect Costs, Parent would still be engaging in an activity that does not further an exempt purpose. The IRS relied on Situation 4 of Rev. Rul. 2007-41, which has the following facts. President B is the president of University K, a Section 501(c)(3) organization. University K publishes a monthly alumni newsletter that is distributed to all alumni of the university. In each issue, President B has a column titled "My Views." The month before the election, President B states in the "My Views" column, "It is my personal opinion that Candidate U should be reelected." For that one issue, President B pays from this personal funds the portion of the cost of the newsletter attributable to the "My Views" column. Even though he paid part of the cost of the newsletter, the newsletter is an official publication of the university. Because the endorsement appeared in an official publication of University K, it constitutes campaign intervention by University K. (m) Parent's employees, pursuant to the Agreement, would solicit contributions to PAC from other employees of Parent. The direct performance of these activities by Parent's employees, at Parent's offices during regular business hours, makes these activities inseparable from Parent's own operations. These activities further the political campaign purposes of Subsidiary and PAC.

ACTIVITY	FEDERAL ELECTION CAMPAIGN ACT OF 1971, AS AMENDED ("FECA")	INTERNAL REVENUE CODE OF 1986, AS AMENDED ("I.R.C.")
REGULATORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
		(n) Finally, the IRS ruled that Parent's provision of specialized services for the benefit of Subsidiary and PAC serves private rather than public interests under American Campaign Academy v. Commissioner, 92 T.C. 1053 (1989) (discussed in Paragraph 41 below). The provision of information by Parent about its employees and the employees of the System Section 501(c)(3) Subsidiaries enables the solicitation of these employees for contributions to PAC in compliance with federal election laws. Soliciting PAC contributions and complying with federal election laws do not further an exempt purpose of Parent under Section 501(c)(3). See generally Jasper L. Cummings, Jr., "Charitable Politicking," Tax Notes Federal 1883 (March 23, 2020). PROHIBITED CAMPAIGN INTERVENTION AND PERMISSIBLE ISSUE ADVOCACY 10. (a) The 2002 CPE Text takes the following position on the difference between prohibited campaign intervention and permissible issue advocacy: "Basically, a finding of campaign intervention in an issue advertisement requires more than just a positive or negative correspondence between an organization's position and a candidate's position. What is required is that there must be some reasonably overt indication in the communication to the reader, viewer, or listener that the organization supports or

ACTIVITY	FEDERAL ELECTION CAMPAIGN ACT OF 1971, AS AMENDED ("FECA")	INTERNAL REVENUE CODE OF 1986, AS AMENDED ("I.R.C.")
REGULATORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
		opposes a particular candidate (or slate of candidates) in an election, rather than being a message restricted to an issue." 2002 CPE Text, at 345. See also Branch Ministries v. Rossotti, 40 F. Supp. 2d 15 (D.D.C. 1999), aff'd, 211 F.3d 137 (D.C. Cir. 2000) (on October 30, 1992, four days before the Presidential election, church placed a full-page advertisement in USA Today and Washington Times with the headline, "Christians Beware. Do not put the economy ahead of the Ten Commandments;" advertisements claimed that then Governor William Jefferson Clinton of Arkansas supported abortion on demand, homosexuality, and the distribution of condoms in public schools, cited Biblical passages, and stated that "Bill Clinton is promoting policies that are in rebellion to God's laws," and concluded with the question, "How then can we vote for Bill Clinton?;" court upheld IRS revocation of church's tax-exempt status for prohibited campaign intervention). Treas. Reg. §1.501(c)(3)-1(d)(2) ("The fact that an organization, in carrying out its primary purpose, advocates social or civic changes or presents opinion on controversial issues with the intention of molding public opinion or creating public sentiment to an acceptance of its views does not preclude such organization from qualifying under section 501(c)(3) . . . .").

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REGULATORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
		Rev. Rul. 76-456, 1976-2 C.B. 151 (Section 501(c)(3) organization can inform candidates of its positions on issues, and urge candidates to publicly support its positions); T.A.M. 199907021 (May 20, 1998) (communications critical of Congress that did not refer to specific candidates by name were not prohibited campaign intervention; broadcasts that identified a person as a candidate and criticized that candidate by name within months of a primary election were prohibited campaign intervention). (b) The IRS expanded on the 2002 CPE Text in Rev. Rul. 2007-41: "Section 501(c)(3) organizations must avoid any issue advocacy that functions as political campaign intervention. Even if a statement does not expressly tell an audience to vote for or against a specific candidate, an organization delivering the statement is at risk of violating the political campaign intervention prohibition if there is any message favoring or opposing a candidate. … All the facts and circumstances need to be considered to determine if the advocacy is political campaign intervention." 2007-1 C.B. at 1424. (c) Efforts to influence the issues addressed in the platform of a political party generally are not viewed as prohibited campaign intervention. However, such expenditures made by private foundations to influence referenda or party platforms, even if not substantial, potentially may be subject to excise taxes under Section 4945. Joint Committee on

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REGULATORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
		Taxation, Present Law and Background Relating to the Federal Tax Treatment of Political Campaign and Lobbying Activities of Tax-Exempt Organizations (JCX-7-22), at 8 n. 30 (April 29, 2022). (d)(i) In T.A.M. 9130008 (July 26, 1991), the IRS addressed whether issue advertisements were an exempt function under Code Section 527(e)(2) subject to tax under Section 527(f). A Section 527 organization, X, was formed to promote the potential candidacy of Z for governor. Supporters of Z formed a separate organization, Y, to increase fiscal responsibility in government, and Z served as its honorary chairman. (ii) X used Y to mail materials to promote a statewide referendum concerning fiscal responsibility in government, and to promote Z's name to the general public. The referendum was on the election ballot for the particular year in question, but was nonbinding as were all referendums in the state. The referendum would likely have an influencing effect on the state's legislators in any legislative action. Y sent thousands of pieces of direct mail promoting fiscal responsibility and Z as a leader on this issue. The payment of V dollars by X to Y funded this direct mail campaign. (iii) One of the mailings consisted of a two page letter from Z as honorary chairman of Y enclosing a newspaper clipping of Z's accomplishments in the area of fiscal responsibility.

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REGULATORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
		A second mailing was also sent concerning the issue of fiscal responsibility and Z was prominently displayed as being a supporter of this effort. Z's name and picture were prominently displayed throughout these mailings. (iv) At the time these mailings were sent, Z was not an announced candidate for governor, nor did these mailings mention the election or his possible candidacy. X stated to the IRS that the mailings were intended to increase Z's statewide name recognition by the general public and his reputation as a leader on state issues. X also stated to the IRS that the mailings were not only designed to support the referendum, but to promote the possible candidacy of Z for governor. (v) The IRS found that these activities were an exempt function under I.R.C. §527(e)(2): "The fact that an activity may constitute grassroots lobbying (or direct lobbying) for other purposes under the Internal Revenue Code does not preclude a finding that it may constitute political campaign activity and, thus, exempt function activity for purposes of section 527 of the Code. Whether the activity directly relates to the influencing of the political selection process depends on the facts and circumstances of the particular case." See discussion of the definition of exempt function in Paragraphs 26 to 38 below.

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REGULATORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
		11. In IRS Fact Sheet 2006-17 (Feb. 2006), the IRS provided the following example of the distinction between permissible issue advocacy and prohibited campaign intervention: Example 16: Candidate A and Candidate B are candidates for the state senate in District W of State X. The issue of State X funding for a new mass transit project in District W is a prominent issue in the campaign. Both candidates have spoken out on the issue. Candidate A supports the new mass transit project. Candidate B opposes the project and supports State X funding for highway improvements instead. P is the executive director of C, a section 501(c)(3) organization that promotes community development in District W. At C's annual fundraising dinner in District W, which takes place in the month before the election in State X, P gives a lengthy speech about community development issues including the transportation issues. P does not mention the name of any candidate or any political party. However, at the conclusion of the speech, P makes the following statement, "For those of you who care about quality of life in District W and the growing traffic congestion, there is a very important choice coming up next month. We need new mass transit. More highway funding will not make a difference. You have the power to relieve the congestion and improve your quality of life in District W. Use that power when you go to the polls and cast your vote in the election for you state senator." C has violated the

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REGULATORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
		political campaign intervention prohibition as a result of P's remarks at C's official function shortly before the election, in which P referred to the upcoming election after stating a position on an issue that is a prominent issue in a campaign that distinguishes the candidates. The IRS also used this example in Rev. Rul. 2007-41, Situation 16, 2007-1 C.B. 1421, 1425, and a similar example in IRS Publication 1828, Tax Guide for Churches and Religious Organizations, Example 3, at 10 (Aug. 2015). See other examples from IRS Fact Sheet 2006-17 and Rev. Rul. 2007-41 in Paragraphs 36 to 43 below. 12. The IRS has rejected the express advocacy test of Buckley v. Valeo, 424 U.S. 1, 77 (1978) (per curiam) (discussed in Paragraphs 7 to 11 of the FECA column for "Statutory Provisions on Contributions, Expenditures, and Electioneering"), to determine prohibited campaign intervention under Section 501(c)(3). 2002 CPE Text, at 346-49. See also PLR 200602042 (the "determination for purposes of section 501(c)(3) does not hinge on whether the communication constitutes 'express advocacy' for Federal election law purposes. Rather for purposes of Section 501(c)(3), one looks to the effect of the communication as a whole; including whether support for, or opposition to, a candidate for public office is express or implied."); T.A.M. 200044038 (Nov. 3, 2000) (campaign intervention does not hinge on whether the communication constitutes express advocacy for federal election law purposes; "[T]he letter

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REGULATORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
		does not directly urge the election or defeat of either candidate. Nevertheless, by featuring A [the candidate's] signature and using the first person with a text in the letter sounding very much like campaign rhetoric, the fundraising letter is inextricably tied to the election of the signatory of the letter."); T.A.M. 9609007 (March 1, 1996) (Buckley's express advocacy rule does not apply to Section 501(c)(3) campaign intervention prohibition); 1999 IRS Nondocketed Service Advice Review 499 ("[T]he plain language of the statute (section 527) describes as exempt functions any activity involving the influencing or attempt to influence the election of a candidate for public office. Furthermore, the legislative history to section 527 makes no mention whatsoever of any intent to limit the scope of exempt functions by the provisions of FECA. Moreover, the purpose of FECA is totally different from the purpose of section 527(f). The purpose of the FECA limitations on for-profit and not-for-profit corporate activity is to prevent large accumulations of wealth from affecting federal elections. The purpose of section 527(f) is to subject tax-exempt entities to tax on income used for activities that do not further a social goal.").
		13. (a) The holdings of the United States Supreme Court in Citizens United v. Federal Election Commission, 558 U.S. 310 (2010), and FEC v. Wisconsin Right to Life, Inc., 551 U.S. 449 (2007) ("WRTL") (Citizens United is discussed in Paragraphs 10 and 11, and WRTL is discussed in Paragraph

ACTIVITY	FEDERAL ELECTION CAMPAIGN ACT OF 1971, AS AMENDED ("FECA")	INTERNAL REVENUE CODE OF 1986, AS AMENDED ("I.R.C.")
REGULATORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
		9, of the FECA column for "Statutory Provisions on Contributions, Expenditures, and Electioneering"), raise the issue of whether the First Amendment limitation on the government's ability to restrict independent expenditures and issue advocacy also applies to the government's ability to use an organization's tax-exempt status to restrict a Section 501(c)(3) organization's independent expenditures and lobbying and issue advocacy. Section 501(c)(3) organizations can argue that the reasoning underlying the holding of Citizens United that corporations have a First Amendment right to make independent expenditures also applies to Section 501(c)(3) organizations. They can also argue that under Citizens United and WRTL, a contextual facts and circumstances test to determine permissible and impermissible express advocacy and issue advocacy is inappropriate. Accordingly, the facts and circumstances test under the federal tax laws also is impermissible. (b) Furthermore, Section 501(c)(3) organizations can argue that the ability of a Section 501(c)(3) organization to make independent expenditures and engage in lobbying and issue advocacy through an affiliated Section 501(c)(4) organization and its PAC is unduly burdensome. In Citizens United, the Court held that a corporation's ability to sponsor a PAC to make contributions and independent expenditures was insufficient to overcome the First Amendment violation of the prohibition on independent expenditures by corporations. First, corporations and their connected PACs

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REGULATORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
		were separate entities and a PAC's speech cannot serve as a proxy for the corporation's speech. Second, PACs were burdensome alternatives that are expensive to administer and subject to extensive regulations. 558 U.S. at 337. (c) Whether these arguments will succeed turns on whether an organization's tax-exempt status and the deductibility of contributions to it are financial subsidies that Congress can grant or deny as a matter of legislative grace, and whether the restrictions of the federal tax laws are unconstitutional conditions on independent expenditures and lobbying and issue advocacy. In determining whether a condition is permissible, an important factor is whether the a Section 501(c)(3) organization's ability to make independent expenditures and engage in lobbying and issue advocacy through an affiliated Section 501(c)(4) organization is unduly burdensome for First Amendment purposes. (d) The Supreme Court has upheld the insubstantiality limitation on legislative lobbying as a permissible condition on the organization's tax-exemption, and on the charitable deduction for contributions to the organization. In Regan v. Taxation With Representation of Washington, 461 U.S. 540, 548-51 (1983), the Court held that "tax exemptions and tax deductibility are a form of [federal] subsidy," and "Congress is not required by the First Amendment to subsidize lobbying.").

A GUIDE TO ELECTION YEAR ACTIVITIES OF SECTION 501(C)(3) AND 501(C)(4) ORGANIZATIONS

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REGULATORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
		See also Agency for International Development v. Alliance for Open Society International, 570 U.S. 205, 213-15 (2013) (denial of a tax deduction for lobbying expenses is a permissible Congressional decision not to subsidize lobbying, and does not impose an unconstitutional burden on protected First Amendment rights; government may choose to subsidize only certain speech, but not other speech, based on viewpoint as long as the conditions define the limits of the government spending program or specify the activities Congress wants to subsidize, rather than seeking to leverage funding to regulate speech outside the contours of the program itself; Congress can condition certain family-planning funding on an organization not engaging in abortion advocacy as part of its federally funded programming); Legal Services Corp. v. Velazquez, 531 U.S. 533, 542 (2001) (Congress may not impose viewpoint-based restrictions on funding when the government does not itself speak or subsidize transmittal of a message it favors but instead expends funds to encourage a diversity of views from private speakers, such as legal services funding for pro-bono attorneys representing indigent clients); Cammarano v. United States, 358 U.S. 498, 513 (1959) (Treasury regulation that denied a deduction for ordinary and necessary business expenses for the cost of ads relating to a ballot measure did not violate the First Amendment; "Petitioners are not being denied a tax deduction because they engage in constitutionally protected activities, but are

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		simply being required to pay for those activities entirely out of their own pockets, as everyone else engaging in such activities is required to do;" "[I]t appears to us to express a determination by Congress that since purchased publicity can influence the fate of legislation which will affect, directly or indirectly, all in the community, everyone in the community should stand on the same footing as regards its purchase so far as the Treasury of the United States is concerned.").
		Camelot Banquet Rooms, Inc. v. United States Small Business Administration, 24 F.4th 640, 646, 647 (7th Cir. 2022) (statute excluded adult entertainment businesses from eligibility for second round of Paycheck Protection Program loans; court applied rational relation review and rejected First Amendment challenge to the exclusion; "Congress is not trying to regulate or suppress plaintiffs' adult entertainment. It has simply chosen not to subsidize it. Such selective, categorical exclusions from a government subsidy do not offend the First Amendment;" "The rational relation test requires a challenger in litigation to exclude any possible rational ground that the legislature might have deemed sufficient for the statutory distinction;" "A government spending program, especially one responding to an economic emergency, is subject to the least rigorous form of judicial review. In enacting such legislation, Congress must respond quickly to an emergency and must hammer together a coalition of majority votes in both houses. The

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		need for compromise and tradeoffs is never greater"); American Society of Association Executives v. United States, 195 F.3d 47 (D.C. Cir. 1999) (under I.R.C. §6033(e), a tax-exempt organization that engages in lobbying and is funded in part by membership dues and other contributions may pay a tax on lobbying activities, or may follow flow-through provisions aimed at making sure no contributor or dues payer takes a deduction for funds used for lobbying; a Section 501(c)(6) trade association can avoid any burden on First Amendment rights by splitting itself into two Section 501(c)(6) organizations – one that engages exclusively in lobbying on behalf of its members, and one that completely refrains from lobbying; the lobbying wing can be funded by dues and contributions for which members will not be able to take a deduction, and the no lobbying affiliate can be funded, at least in part, by deductible dues), cert. denied, 529 U.S. 1108 (2000); Christian Echoes National Ministry, Inc. v. United States, 470 F.2d 849 (10th Cir. 1972) (court upheld insubstantiality limitation on lobbying against First Amendment challenge), cert. denied, 414 U.S. 864 (1973); Parks v. Commissioner, 145 T.C. 278, 335-41 (2015) (court upheld excise tax on lobbying expenditures by private foundations under I.R.C. §4945 against First Amendment challenge; government need only show a rational basis for the decision not to extend a subsidy for speech by allowing tax-deductible contributions to support it; since Congress may deny outright the tax exemption and eligibility to

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		receive tax-deductible contributions for a Section 501(c)(3) organization that engages in substantial lobbying, it may also impose on Section 501(c)(3) private foundations the less onerous sanction of excise taxes that are proportionate to the lobbying expenditures and likewise designed to deter the use of any tax subsidy for lobbying; since the taxpayer could readily avoid the excise taxes by establishing a separate Section 501(c)(4) tax-exempt entity to make lobbying expenditures, the excise taxes did not burden lobbying, but instead only operated to limit its subsidization), aff'd, 717 Fed. App'x 712 (9th Cir. 2017) (memorandum disposition not for publication). (e) In an important concurring opinion in Regan, Justice Blackmun, joined by Justices Brennan and Marshall, wrote that although the First Amendment does not require the government to subsidize lobbying through a tax deduction, conditioning the deduction on a complete prohibition on lobbying would be unconstitutional since it would deny "a significant benefit to organizations choosing to exercise their constitutional rights." 461 U.S. at 552. This concern was addressed by the ability of a Section 501(c)(3) organization to use an affiliated, yet separate, Section 501(c)(4) organization to engage in lobbying. If the Section 501(c)(3) organization's ability to use a Section 501(c)(4) organization for lobbying is limited, the limitation creates constitutional issues: "Should the IRS attempt to limit the control these organizations exercise over the lobbying of their §501(c)(4)

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		affiliates, the First Amendment problems would be insurmountable." 461 U.S. at 553. Justice Blackmun also wrote, "[A]n attempt to prevent §501(c)(4) organizations from lobbying explicitly on behalf of their §501(c)(3) affiliates would perpetuate §501(c)(3) organizations' inability to make known their views on legislation without incurring the unconstitutional penalty. In my view, any such restrictions would render the statutory scheme unconstitutional." 461 U.S. at 553-54. See also Planned Parenthood Federation of America, Inc. v. Kennedy, 162 F.4th 155, 171-74 (1st Cir. 2025) (Section 71113 of the Reconciliation Act of July 4, 2025 prohibited Medicaid payments to an entity that, inter alia, is a Section 501(c)(3) organization that provides abortions; the prohibition also applied to affiliates that did not provide abortions but the statute did not define affiliates; court construed Section 71113 to apply only to affiliate relationships that display traditional hallmarks of direction or oversight: the power to manage, supervise, or govern another entity's operations; court rejected the construction that affiliation depends of shared values, professional standards, or membership in the same umbrella organization; to adopt the latter construction would risk unconstitutionally conditioning federal funds on protected expressive activity).

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		Autor v. Pritzker, 740 F.3d 176 (D.C. Cir. 2014) (lobbyists who challenged presidential executive order making registered lobbyists ineligible to serve on federal Industry Trade Advisory Committees stated a viable First Amendment unconstitutional conditions claim; ban pressured lobbyists to limit their constitutional right to petition the government); Jeffrey R. Sural, "Personae Non Gratae and Their Constitutional Rights: Banning Lobbyists From Agency Advisory Committees," 27 No. 2 Air & Space Lawyer 4 (2014). American Association of University Professors v. Trump, 815 F. Supp. 3d 907, 958-60 (N.D. Cal. 2025) (associations and labor unions that represent over 100,000 employees of the University of California showed a substantial likelihood of success that government impermissibly conditioned aid in violation of First Amendment rights; government may define the limits of a government spending program but cannot impose conditions that seek to leverage funding to regulate speech outside the contours of the program; government proposes recipient-wide reforms that went well beyond their stated purpose of combatting anti-Semitism and that apply across all of UCLA's activities, are not limited to any particular federally funded program, and do not have any apparent connection to research goals or priorities that a particular funding agency seeks to advance for a specific program).

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		President and Fellows of Harvard College v. United States Department of Health and Human Services, 798 F. Supp. 3d 77, 121-24 (D. Mass. 2025) (government funding cuts were linked to Harvard's rejection of the government's efforts to control viewpoints at Harvard and Harvard's filing of its lawsuit to protect its autonomous decision-making and right to manage an academic community and evaluate teaching and scholarship free from government interference; Harvard's actions were protected by the First Amendment and the funding cuts impermissibly imposed unconstitutional conditions on Harvard's receipt of federal funds; although the government announced a funding review consistent with the goals of combatting antisemitism, it did not engage in such a review, weighed the value of any grant, gathered any data regarding antisemitism at Harvard, or considered if and how terminating certain grants would improve the situation for Jewish students at Harvard). See generally Ilya Slomin, "Mitchell Berman on Conditional Federal Grants and the Constitution," The Volokh Conspiracy (May 25, 2025) ("If Trump can use threats over tariffs to pressure nations into opening their markets or strengthening their currencies or ordering more U.S. arms, why can't he do the same with American institutions? Because foreign nations have no constitutional rights, but American universities, lawyers, journalists and states do – rights protected by the First, Fifth, Sixth and Tenth

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		Amendments. Trump's efforts to leverage government benefits against them violate those rights by penalizing their exercise. When [Trump Council of Economic Advisers Chair Stephen] Miran defended high tariffs to gain concessions from trading partners, he noted that 'access to the U.S. market is a privilege that must be earned, not a right.' The same applies to federal funding for education, research and other governmental benefits. They, too, are privileges, not rights. But it's impermissible to withhold benefits for the purpose of shaping or punishing American institutions for exercising the rights they do have – including free speech.") (available at https://reason.com/volokh/2025/05/25/mitchell-berman-on-conditional-federal-grants-and-the-constitution/). (f) Under Citizens United, Section 501(c)(3) organizations can argue that the subsidy no longer makes a difference in the constitutional analysis. In the majority opinion in Citizens United, Justice Kennedy acknowledged that "[s]tate law grants corporations special advantages -- such as limited liability, perpetual life, and favorable treatment of the accumulation and distribution of assets." Nevertheless, this state support is an insufficient justification to prohibit speech, and the state "cannot exact as the price of those special advantages the forfeiture of First Amendment rights." 558 U.S. at 351.

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		(g) Justice Kennedy also rejected the argument that the prohibition on independent expenditures did not violate a corporation's First Amendment rights because the corporation could form a PAC to make them. He wrote that "[n]o sufficient governmental interest justifies limits on the political speech of nonprofit or for-profit corporations." Furthermore, "[e]ven if a PAC could somehow allow a corporation to speak – and it does not – the option to form PACs does not alleviate the First Amendment problems. . . . PACs are burdensome alternatives; they are expensive to administer and subject to extensive regulations." 558 U.S. at 337-39. (h) The government can argue that the special advantages granted to Section 501(c)(3) organizations under state law are not government subsidies. Once it is recognized that Congress does not have any obligation to subsidize a Section 501(c)(3) organization's independent expenditures and lobbying and issue advocacy, under Regan it is not unduly burdensome to require a Section 501(c)(3) organization to carry out its political activities through an affiliated, yet separate, Section 501(c)(4) organization. See generally Samuel D. Brunson, "A New Johnson Amendment: Subsidy, Core Political Speech, and Tax-Exempt Organizations," 43 Yale Law & Policy Review 354, 384 (2025) ("While the Court [in Citizens United] did not override Taxation With Representation, it exposed the

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		significant holes in that case's reasoning. And those holes are glaring. It cannot be, for instance, that the government can limit my speech as long as it allows my spouse, my children, or my siblings to speak. We are different people who can exercise our rights in different ways. Similarly, the legal personhood of a public charity is different from the legal personhood of a social welfare organization, even if they were formed by the same person and have the same board of directors. U.S. law recognizes and enshrines these formal differences. Along those same lines, to the extent that corporations have speech rights, it cannot be that forming a anew entity that can speak cures that unconstitutional infringement on the first entity's speech rights.") (footnote omitted). Miriam Galston, "When Statutory Regimes Collide: Will Citizens United and Wisconsin Right to Life Make Federal Tax Regulation of Campaign Activity Unconstitutional?," 13 University of Pennsylvania Journal of Constitutional Law 867 (May 2011); Frances R. Hill, "Exempt Organizations in the 2008 Election: Will Wisconsin Right to Life Bring Changes?," 19 University of Florida Journal of Law and Public Policy 271, 284-88 (August 2008); Hannah Lepow, "Speaking Up: The Challenges to Section 501(c)(3)'s Political Activities Prohibition in a Post-Citizens United World," 2014 Columbia Business Law Review 817.

A GUIDE TO ELECTION YEAR ACTIVITIES OF SECTION 501(C)(3) AND 501(C)(4) ORGANIZATIONS

ACTIVITY	FEDERAL ELECTION CAMPAIGN ACT OF 1971, AS AMENDED ("FECA")	INTERNAL REVENUE CODE OF 1986, AS AMENDED ("I.R.C.")
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		(i) A close reading of the Supreme Court's holdings in Regan, FEC v. Massachusetts Citizens for Life, Inc., 479 U.S. 238 (1986), Citizens United, Ysursa v. Pocatello Education Association, 555 U.S. 353 (2009), and Agency for International Development supports the constitutionality of the limitations under Code Section 501(c)(3) on independent expenditures and lobbying and issue advocacy. See American Bar Association, Section of Taxation, Comments on Section 501(c)(4) Organizations, May 7, 2014, at 52-56 (available at www.americanbar.org/content/dam/aba/administrative/taxation/policy/050714comments.pdf-411k-2014-05-13). (j) In FEC v. Massachusetts Citizens for Life, Inc., the Court addressed the provisions of FECA prohibiting a corporation from using treasury funds for expenditures for express advocacy, and requiring that the corporation use voluntary contributions to a separate segregated fund or connected PAC for these expenditures. The Court held that these provisions were unconstitutional as applied to an organization that: (i) is formed for the express purpose of engaging in political advocacy, and is prohibited from engaging in business activities; (ii) does not have any shareholders or others with a claim on its assets or earnings; and (iii) is not formed by a business corporation or labor union, and does not accept contributions from these entities. The Court also held that requiring the organization to use a

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		PAC to make expenditures for express advocacy was unduly burdensome. In reaching this result, the Court rejected the argument that under Regan the availability of an affiliated organization or a PAC for this purpose was constitutionally sufficient. In Regan, the ability to use an affiliated organization or PAC did not infringe on any protected activity, "for there is no right to have speech subsidized by the Government. By contrast, the activity that may be discouraged in this case, independent spending, is core political speech under the First Amendment." 479 U.S. at 256 n. 9 (citation omitted). (k) The Court in Citizens United relied on Massachusetts Citizens for Life. Thus, the Court implicitly recognized the continuing validity of the principle that the government does not have any obligation to grant a tax-exemption to subsidize independent expenditures and lobbying and issue advocacy. (l) In Ysursa, the Court upheld a provision of Idaho law that permitted a public employee to elect to have the employer deduct from wages and remit to the union payments for union dues, and prohibited payroll deductions for political activities. In reaching this result, the Court relied on Regan and applied the principle that the government does not have any obligation to assist any person to exercise its First Amendment rights: "The First Amendment prohibits government from 'abridging the freedom of speech,' it does

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REGULATORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
		not confer an affirmative right to use government payroll mechanisms for the purpose of obtaining funds for expression. Idaho's law does not restrict political speech, but rather declines to promote that speech by allowing public employee checkoffs for political activities. Such a decision is reasonable in light of the State's interest in avoiding the appearance that carrying out the public's business is tainted by partisan political activity. That interest extends to government at the local as well as state level, and nothing in the First Amendment prevents a State from determining that its political subdivisions may not provide payroll deductions for political activities." 555 U.S. at 355. (m) The Court in Ysursa also held that since the government does not have any obligation to subsidize or otherwise assist in a person's exercise of its First Amendment rights, the government need only show a rational basis for its treatment. The State's rationale in Ysursa of "avoiding in reality or appearance of government favoritism or entanglement with partisan politics" was sufficient under the rational basis test. 555 U.S. at 359. (n) The lesson of Regan, Massachusetts Citizens for Life, Citizens United, and Ysursa is that when the requirements for tax-exemption are at issue, the rational basis test for constitutionality applies and the requirements will likely be upheld. When a prohibition on express advocacy is at issue,

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		strict scrutiny applies and the prohibition will likely be struck down. (o) The Court's decision in Agency for International Development is consistent with this analysis. Relying on Regan, the Court held that the denial of a tax deduction for lobbying expenses is a permissible Congressional decision not to subsidize lobbying. The Court also held that the ability to use a dual Section 501(c)(3) organization and Section 501(c)(4) structure does not impose an undue burden on protected First Amendment activity. Furthermore, the Court set forth the test for permissible and impermissible conditions on the receipt of government benefits as "conditions that define the limits of the government spending program – those that specify the activities Congress wants to subsidize – and conditions that seek to leverage funding to regulate speech outside the contours of the program itself." 570 U.S. at 214-15. Restrictions on political activity involving tax-exemption were permissible conditions that define the limits of the government spending program. For example, Congress can condition certain family-planning funding on an organization not engaging in abortion advocacy as part of its federally funded programming. However, Congress may not impose viewpoint-based restrictions on funding when the government does not itself speak or subsidize transmittal of a message it favors but instead expends funds to encourage a diversity of views from private speakers, such as legal

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		services funding for pro-bono attorneys representing indigent clients. Legal Services Corp. v. Velazquez, 531 U.S. 533, 542 (2001). See also Cammarano v. United States, 358 U.S. 498, 512-13 (1959) (denial of a business expense deduction for the cost of ads for a ballot measure was not aimed at the suppression of ideas); American Society of Association Executives v. United States, 195 F.3d 47 (D.C. Cir. 1999) (under I.R.C. §6033(e), a tax-exempt organization that engages in lobbying and is funded in part by membership dues and other contributions may pay a tax on lobbying activities, or may follow flow-through provisions aimed at making sure no contributor or dues payer takes a deduction for funds used for lobbying; a Section 501(c)(6) trade association can avoid any burden on First Amendment rights by splitting itself into two Section 501(c)(6) organizations – one that engages exclusively in lobbying on behalf of its members, and one that completely refrains from lobbying; the lobbying wing can be funded by dues and contributions for which members will not be able to take a deduction, and the nonlobbying affiliate can be funded, at least in part, by deductible dues), cert. denied, 529 U.S. 1108 (2000); Parks v. Commissioner, 145 T.C. 278, 335-41 (2015) (court upheld excise tax on lobbying expenditures by private foundations under I.R.C. §4945 against First Amendment challenge; government need only show a rational basis for the decision not to extend a subsidy for speech by allowing

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		tax-deductible contributions to support it; since Congress may deny outright the tax exemption and eligibility to receive tax-deductible contributions for a Section 501(c)(3) organization that engages in substantial lobbying, it may also impose on Section 501(c)(3) private foundations the less onerous sanction of excise taxes that are proportionate to the lobbying expenditures and likewise designed to deter the use of any tax subsidy for lobbying; since the taxpayer could readily avoid the excise taxes by establishing a separate Section 501(c)(4) tax-exempt entity to make lobbying expenditures, the excise taxes did not burden lobbying, but instead only operated to limit its subsidization), aff'd, 717 Fed. App'x 712 (9th Cir. 2017) (memorandum disposition not for publication) (p) The remaining constitutional argument against the Section 501(c)(3) limitations on independent expenditures and lobbying and issue advocacy is that under Citizens United and WRTL, the facts and circumstances test is too vague to provide meaningful guidance to those who wish to engage in these activities. One answer to this argument is that under the rational basis test, the strict scrutiny holdings of Citizens United and WRTL do not apply. Nevertheless, there is authority that a facts and circumstances test under the tax laws triggers vagueness concerns under the First Amendment. See United Cancer Council, Inc. v. Commissioner, 165 F.3d 1173, 1179 (7th Cir. 1999) (facts and circumstances test for political intervention under Code

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REGULATORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
		Section 501(c)(3) is no standard at all, and makes the tax status of charitable organizations and their donors turn on the whim of the IRS); Big Mama Rag, Inc. v. United States, 631 F.2d 1030 (D.C. Cir. 1980) (nonprofit organization with a feminist orientation published a monthly newspaper; definition of "educational" under Treas. Reg. §1.501(c)(3)-1(d)(3) was unconstitutionally vague; regulation provided that an "organization may be educational even though it advocates a particular position or viewpoint so long as it presents a sufficiently full and fair exposition of the pertinent facts as to permit an individual or the public to form an independent opinion or conclusion. On the other hand, an organization is not educational if its principal function is the mere presentation of unsupported opinion."); Parks v. Commissioner, 145 T.C. 278, 303-309 (2015) (Treas. Reg. §56.4911-2(b)(1)(ii)(A) provided that excise tax on lobbying expenditures by Section 501(c)(3) private foundations under I.R.C. §4945 applies to a direct lobbying communication that "refers to" specific legislation; illustrative examples under Treas. Reg. §56.4911-2(b)(4)(ii)(A)-(B) and (d)(1)(iii) provided that "refers to" means communications that actually cite legislation or ballot measures by name, and communications that employ terms widely used in connection with the legislation or that reference its general content or effect; court held that the criteria of "terms widely used" and "general content or effect" were not unconstitutionally vague, and were

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		sufficiently objective to afford fair notice of the conduct proscribed and were not susceptible of discriminatory enforcement), aff'd, 717 Fed. App'x 712 (9th Cir. 2017) (memorandum disposition not for publication). (q) One commentator takes the position that under Minnesota Voters Alliance v. Mansky, 138 S. Ct. 1876 (2018), the restrictions on political activity are unconstitutionally vague. The First Amendment requires the IRS to apply the prohibition on campaign intervention by Section 501(c)(3) organizations, the Section 527(f) tax on the exempt functions of Section 501(c)(4) social welfare organizations, labor unions, and trade associations, and the substantiality limitation on lobbying by Section 501(c)(3) organizations using reasonable, objective, workable, and determinate standards. These standards should: (i) prohibit Section 501(c)(3) organizations only from expressly endorsing or opposing particular candidates, political parties, and ballot questions, or engaging in the functional equivalent thereof; (ii) impose tax under Section 527(f) on the exempt functions of Section 501(c)(4) social welfare organizations, labor unions, and trade associations only for their express advocacy of, or opposition to, particular candidates, parties, and ballot questions, or the functional equivalent thereof; and (iii) with respect to the substantiality limitation on lobbying, prohibit Section 501(c)(3) organizations only from expressly supporting or opposing pending legislative proposals, or engaging in the functional

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REGULATORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
		equivalent thereof. These standards would protect the ability of Section 501(c)(3) organizations to engage in issue advocacy and discuss public policy questions. Edward A. Zelinsky, "Applying the First Amendment to the Internal Revenue Code: Minnesota Voters Alliance and the Tax Law's Regulation of Nonprofit Organizations' Political Speech," 83 Albany Law Review 1 (2019/2020). (r) In Mansky, a Minnesota statute provided, "A political badge, political button, or other political insignia may not be worn at or about the polling place on primary or election day." The challengers to the law did not seek to wear buttons or other insignia supporting or opposing candidates, political parties, or ballot questions in the current election. Rather, they wanted to wear buttons and clothing asserting general political positions. One person planned to wear a Tea Party Patriots shirt, and others, upset about the lack of a voter identification law, wanted to wear buttons with the words, "Please I.D. Me," a picture of an eye, and a telephone number and web address for an organization that supported voter identification laws. (s) The Supreme Court held that the statute violated the First Amendment. Under the test of reasonableness, the "unmoored use of the term 'political,' combined with haphazard interpretations" in official guidance, was problematic. The statute banned apparel of an "indeterminate" nature, and prevented a voter from wearing

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REGULATORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
		any clothing or buttons that address "any subject on which a political candidate or party has taken a stance." 138 S. Ct. at 1881 and 1891. The political apparel ban was an "indeterminate prohibition" that invited "erratic application" because it lacked "objective, workable standards." Id. at 1890-91. (t) The commentator argues that the rule of Rev. Rul. 2007-41, 2007-1 C.B. 1431, that issue advocacy may constitute prohibited campaign intervention depending on the facts and circumstances, even if it does not mention any candidate, political party, or ballot question, violates the standards of Mansky. Like the apparel statute, the revenue ruling's concept of issue advocacy is unmoored, lacks objective, workable standards, and proscribes in indeterminate fashion statements about issues of public policy. 83 Albany Law Review at 14-15. (u) The commentator also argues that the rule of Rev. Rul. 2004-6, 2004-1 C.B. 328 (discussed in Paragraphs 31 to 40 below) that issue advocacy, depending on the facts and circumstances and even if it does endorse or oppose a candidate, may constitute an exempt function that triggers the Section 527(f) tax, violates the standards of Mansky. The facts and circumstances test is insufficiently objective or workable for First Amendment purposes. 83 Albany Law Review at 17-20.

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REGULATORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
		(v) In addition, under Treasury Regulation Section 1.501(c)(4)-1(a)(1)-(2), a Section 501(c)(4) organization must promote social welfare, which does not include direct or indirect participation or intervention in political campaigns on behalf of or in opposition to any candidate for public office. The commentator argues that this standard is also unconstitutionally indeterminate because indirect intervention goes beyond support for, or opposition to, a candidate and might, depending on the facts and circumstances, cover general issue advocacy that indirectly supports or opposes a candidate. 83 Albany Law Review at 21. (w) The commentator also argues that with respect to the substantiality limitation on lobbying by Section 501(c)(3) organizations, the definition of lobbying under Treasury Regulation Section 1.501(c)(3)-1(c)(3)(ii)(a)-(b) is unconstitutionally indeterminate. The regulation provides that an organization engages in lobbying when it: "(a) contacts, or urges the public to contact, members of a legislative body for the purpose of proposing, supporting, or opposing legislation; or (b) advocates the adoption or rejection of legislation." (x) Just as the undefined term "political" was indeterminate in the voter apparel statute in Mansky, the undefined term "legislation" is indeterminate. Since every issue of public policy can result in legislation, the unmoored term

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		"legislation" prohibits most discussions of public concerns since virtually any concern can be framed as legislation. In addition, the statutory term "substantial" provides no real guidance as to the quantity of speech that causes the loss of tax-exempt status. 83 Albany Law Review at 22-23. (z) To remedy the constitutional flaws on the prohibition on campaigning and the tax on exempt functions, the commentator recommends that these provisions be subject to the test used by Chief Justice Roberts in FEC v. Wisconsin Right to Life, Inc., 551 U.S. 449, 469-70 (2007) (discussed in Paragraph 9 of the FECA column for "Statutory Provisions on Contribution, Expenditures, and Electioneering"). Justice Roberts used the following test to uphold as-applied restrictions on corporate political expenditures: the restrictions can apply only express advocacy for the election or defeat of clearly identified candidates, parties, and ballot questions, or the functional equivalent thereof. Functional equivalent means speech susceptible of no reasonable interpretation other than as an appeal to vote for or against a particular candidate, party, or ballot question. 83 Albany Law Review at 26-27. (aa) To remedy the constitutional flaws in the substantiality limitation on lobbying, the commentator recommends that the statutory definitions of Code Section 4911 that apply to eligible Section 501(c)(3) organizations that make the safe harbor lobbying election under Code Section 501(h) apply to

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REGULATORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
		all Section 501(c)(3) organizations. 83 Albany Law Review at 24-26 and 33. See discussion of Sections 4911 and 501(h) in Paragraphs 45 to 55 below. (bb) Under Code Section 4911, "legislation" means "action with respect to Acts, bills, resolutions, or similar items by the Congress, any State legislature, any local council, or similar governing body, or by the public in a referendum, initiative, constitutional amendment or similar procedure." I.R.C. §4911(e)(2). "Action" means "the introduction amendment, enactment, defeat, or repeal of Acts, bills, resolutions, or similar items." I.R.C. §4911(e)(3). "Influencing legislation" means "any attempt to influence any legislation through [either] an attempt to affect the opinions of the general public or any segment thereof … [or] communication with any member or employee of a legislative body, or with any government official or employee who may participate in the formulation of the legislation." I.R.C. §4911(d)(1)(A)-(B). SECTION 501(c)(3) ORGANIZATIONS AND THEIR RELATIONSHIPS WITH AFFILIATED SECTION 501(c)(4) ORGANIZATIONS 14. A Section 501(c)(3) organization can create a separately incorporated and affiliated Section 501(c)(4) organization. The Section 501(c)(4) organization can then create a Section 527(f)(3) political organization known as a separate

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REGULATORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
		segregated fund ("SSF"), or a connected PAC. The PAC then makes contributions to candidates and political organizations. Treas. Reg. §1.527-6(f)-(g); Rev. Rul. 2004-6, 2004-1 C.B. 328, 329. After Citizens United, either the Section 501(c)(4) organization or its PAC can use its treasury funds to make independent expenditures or electioneering communications, but only the PAC can use its treasury funds make contributions to candidates and parties. The Section 501(c)(4) organization can use its treasury funds to establish, administer, and solicit contributions to the PAC. 52 U.S.C. §§30118(a)-(b)(2)(C) (formerly 2 U.S.C. §§441b(a)-(b)(B)(2)(C)). See discussion of FECA's requirements for a Section 501(c)(4) organization's establishment and operation of a PAC in Paragraphs 2 to 13 of the FECA column. 15. To avoid attributing the activities of the Section 501(c)(4) organization to the Section 501(c)(3) organization, the organizations should observe the following guidelines: (a) The Section 501(c)(4) organization should keep records and bank accounts separate from those of the Section 501(c)(3) organization. The records should show that tax-deductible contributions to the Section 501(c)(3) organization were not used for the Section 501(c)(4) organization's campaign activity, or for the Section 501(c)(4) organization's lobbying activity in excess of what

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REGULATORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
		the Section 501(c)(3) organization could otherwise do. Branch Ministries v. Rossotti, 211 F.3d 137, 143 (D.C. Cir. 2000) ("[T]he Church can initiate a series of steps that will provide an alternate means of potential communication. . . . Should the Church proceed to do so, however, it must understand that the related 501(c)(4) organization must be separately incorporated; and it must maintain records that will demonstrate that tax-deductible contributions to the Church have not been used to support the political activities conducted by the 501(c)(4) organization's political action arm."); see also Regan v. Taxation With Representation of Washington, 461 U.S. 540, 552-53 (1983) (Blackmun, J., concurring); Treas. Reg. §1.527-2(b)(2) (an organization maintaining a separate segregated fund must keep records that are adequate to verify receipts and disbursements, and identify the exempt function activity for which each expenditure is made); PLR 9850025. (b) A best practice is not to have any overlap of directors on either board. If there is overlap, the majority of the members of each organization's board should be independent. In addition, officers and employees of the Section 501(c)(3) organization should not serve on the Section 501(c)(4) organization's board, and vice versa. Finally, neither organization should have the power to appoint members of the other organization's board.

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REGULATORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
		(c) If there are overlapping paid directors, officers, or employees, the organizations should reasonably allocate their time and compensation between the organizations based on the work they do for each organization. Finally, the organizations should reasonably allocate other shared goods, services, and facilities. (d) The corporate governance documents of each organization should permit the organization to act independently of the other organization. (e) The chief executive officer of the Section 501(c)(3) organization should not serve as the chief executive officer of the Section 501(c)(4) organization. See generally Patricia M. Zwiebel, "A Primer on Lobbying and Political Activities for Tax-Exempt Organizations," 29 Taxation of Exempts 4, 9-10 (Nov./Dec. 2017). 16. With respect to the relationship between a Section 501(c)(3) organization and the PAC of an affiliated Section 501(c)(4) organization: (a) the Section 501(c)(3) organization cannot control the PAC, such as having the right to appoint or approve the PAC's board of directors; (b) the Section 501(c)(3) organization should avoid sharing its assets, such as its equipment, facilities, goodwill, investments, mailing lists, voter lists, and personnel, with the PAC. If these assets are shared, there must be reasonable allocations of expenses based on arm's length standards, such as time spent by

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REGULATORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
		shared employees working for each organization, and records kept to substantiate the allocations, such as timesheets for shared employees; (c) the Section 501(c)(3) organization may have to make its mailing list and voter lists available to other political organizations and candidates on the same terms. To avoid the risk of this obligation, the Section 501(c)(3) organization should not allow the Section 501(c)(4) organization to use its mailing list and voter list for partisan purposes; and (d) the directors, officers, and employees of the Section 501(c)(3) organization who assist the PAC without arm's length compensation must act voluntarily in their individual capacity. See discussion of acting in an individual capacity in Paragraphs 1 to 10 of the I.R.C. column for "Campaign Activities of Section 501(c)(3) Organization's Directors, Officers, and Employees." 17. The 2002 CPE Text contains an extensive discussion of the areas in which a Section 501(c)(3) organization should use the appropriate care so that its relationship with an affiliated Section 501(c)(4) organization does not cause the Section 501(c)(3) organization to violate the prohibition against campaign intervention. "So long as the [Section 501(c)(3) and 501(c)(4)] organizations are kept separate (with appropriate record keeping and fair market reimbursement for facilities and services), the activities of the IRC 501(c)(4) organization or of the PAC will not jeopardize the

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REGULATORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
		IRC 501(c)(3) organization's exemption status. See e.g., PLR 2001-03-084 (Oct. 24, 2000)." 2002 CPE Text, at 367. 18. (a) The 2002 CPE Text provides that similarity of names between the Section 501(c)(3) organization, Section 501(c)(4) organization, and its PAC does not cause the PAC's activities to be attributed to the Section 501(c)(3) organization: "[W]hen an organization, such as an IRC 501(c)(4) organization, establishes a federal PAC, it is required to include its full name in the name of the PAC. See 11 C.F.R. §102.14(c). If the IRC 501(c)(4) organization has also established a related IRC 501(c)(3) organization with a similar name, the activities of the IRC 527 organization are not going to be attributed to the IRC 501(c)(3) organization simply because the IRC 501(c)(3) organization and the IRC 501(c)(4) organization have similar names and the name of the IRC 501(c)(4) organization is included in the name of the PAC. There must be something more to indicate that the IRC 501(c)(3) organization is supporting the PAC, for example, the use of the IRC 501(c)(3) organization's tangible or intangible assets." 2002 CPE Text, at 368; see also Center on Corporate Responsibility, Inc. v. Schultz, 368 F. Supp. 863 (D.D.C. 1973) (Section 501(c)(3) organization does not lose its tax-exempt status when it establishes an affiliated taxable corporation with a similar name to carry on activities it could not carry on).

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		Cf. Pursuing America's Greatness v. Federal Election Commission, 831 F.3d 500 (D.C. Cir. 2016) (under 11 C.F.R. §102.14(a) and FEC Advisory Opinion 2015-4, an unauthorized committee cannot include any candidate's name in its own name and any name under which a committee conducts activities, including online projects such as websites and social media pages; to support Governor Huckabee's run for the White House, Pursuing America's Greatness ("PAG"), a political committee that works for the election of federal officeholders, used a website and Facebook page named "I Like Mike Huckabee," court granted PAG a preliminary injunction PAG because there was a substantial likelihood that, as applied to PAG, the FEC's naming restrictions violated the First Amendment; court held that the FEC's naming restrictions were content-based restrictions subject to strict scrutiny review; the government had to show the restriction was narrowly tailored to a compelling government interest, and if a less restrictive alternative for achieving that interest exists, the government must use that alternative; the FEC's naming restrictions were not the least restrictive means to achieve the government's interest that voters might mistakenly believe an unauthorized committee's activities were approved by a candidate if the committee used the candidate's name in its title; the FEC could require a large disclaimer at the top of the websites and social media pages

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		of unauthorized committees that declares, "This website Is Not Candidate Doe's Official website"). (b) "An IRC 501(c)(3) organization's resources include intangible assets, such as its logos, trademarks and goodwill, that may not be used to support the political campaign activities of another organization. The licensing of an IRC 501(c)(3) organization's logos or trademarks to an IRC 527 organization may be considered official sanction by the IRC 501(c)(3) organization of the political activities of the IRC 527 organization." 2002 CPE Text, at 369. 19. Although the 2002 CPE Text takes the position that similarity of names does not violate the prohibition, it also states that a Section 501(c)(3) organization can improperly allow its name to be used in joint fundraising with a PAC, and that in determining whether officials of the Section 501(c)(3) organization are acting in their personal capacity or on behalf of the organization when engaging in campaign activity, evidence of acting on behalf of the organization includes any similarity of name between the organization and a PAC. 2002 CPE Text, at 366-69. 20. A Section 501(c)(3) organization's fundraising activities should be separate from the PAC's fundraising activities. The Section 501(c)(3) organization's solicitations should (a) be mailed in separate envelopes and at separate times from the PAC's solicitations; and (b) make no reference to

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REGULATORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
		the PAC, such as a flier soliciting funds for the PAC. Similarly, a PAC should not notify donors of the PAC's campaign activities, and simultaneously inform them of the public charity's training program for voter registration and get-out-the-vote drives and the charity's need for funds for the program. 21. The 2002 CPE Text contains the following admonition on joint fundraising: "[A]ny attempt at joint fundraising should be carefully scrutinized from the aspect of whether the IRC 501(c)(3) organization is allowing its name or its goodwill to be used to further an activity forbidden to it. For example, if a well-known IRC 501(c)(3) organization 'jointly' sponsors a fundraising event with a lesser-known PAC, there is a strong suspicion that the IRC 501(c)(3) organization's drawing power is being used to aid the political intervention activities of the PAC." 2002 CPE Text, at 369. See discussion of Section 501(c)(3) organization's fundraising letters in Paragraphs 2 and 3 of the I.R.C. column for "Statutory And Regulatory Provisions On Contributions To And Fundraising For Section 501(c)(3) Organizations." 22. The Section 501(c)(4) organization often wishes to solicit PAC contributions from the members of the Section 501(c)(3) organization. This solicitation raises the issue of how the Section 501(c)(3) organization can give the Section 501(c)(4) organization access to the Section 501(c)(3) organization's mailing list without running afoul of the

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REGULATORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
		prohibition on campaign intervention. The Section 501(c)(3) organization can use one of four approaches, which from the riskiest to the safest are as follows: (a) The Section 501(c)(3) organization rents its mailing list at fair market rental for specific Section 501(c)(4) organization PAC solicitations, and the Section 501(c)(3) organization does not participate in drafting the solicitations. The holding of the Court in Regan v. Taxation With Representation of Washington, 461 U.S. 540 (1983), supports this approach. In Regan, the Court held that conditioning the tax-exemption of Section 501(c)(3) organizations and the deduction for contributions to Section 501(c)(3) organizations on the insubstantiality limitation is constitutional because the government does not have to subsidize an organization's lobbying through tax benefits. It also held that the government cannot deny a person a benefit because that person exercises a constitutional right. In addition, three Justices took the position in a concurring opinion that the insubstantiality limitation is constitutional when the Section 501(c)(3) organization can use an affiliated, yet separate, Section 501(c)(4) organization to engage in lobbying activities. To satisfy the requirement that the organizations be separate, the Section 501(c)(3) organization and Section 501(c)(4) organization must be separately incorporated, and maintain records showing that the Section 501(c)(4) organization does not use tax-deductible contributions to the Section 501(c)(3)

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REGULATORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
		organization for lobbying by the Section 501(c)(4) organization. Therefore, the Section 501(c)(3) organization should be able to rent its mailing list for fair market rental to the Section 501(c)(4) organization for political purposes. Nevertheless, the IRS may take the position that rental of its mailing list exclusively for political purposes constitutes impermissible political activity. (b) The Section 501(c)(3) organization rents its mailing list at fair market rental to its affiliated Section 501(c)(4) organization without restriction as to use. (c) The Section 501(c)(3) organization rents its mailing list at fair market rental to its affiliated Section 501(c)(4) organization to use for nonpolitical communications, such as a request to sign-up for a mailing list or receive public policy alerts. The Section 501(c)(4) organization then can communicate further with those who respond to its initial communication. In the further communications, the Section 501(c)(4) organization can make political communications. If the persons who respond become members of the Section 501(c)(4) organization, their names belong to the Section 501(c)(4) organization. Otherwise, since the Section 501(c)(4) organization can solicit only current members of the Section 501(c)(3) organization, the Section 501(c)(4) organization should pay an additional annual fee to the

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REGULATORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
		Section 501(c)(3) organization to check on a person's current membership status. (d) The Section 501(c)(3) organization rents its mailing list at fair market rental to all other organizations. See generally Elizabeth Kingsley, "Election Law, Tax Law, and Funding a 'Connected' PAC," Taxation of Exempts, at 44-48 (Nov./Dec. 2009). 23. (a) With respect to the charitable contribution/PAC matching program described in Paragraph 11 of the FECA column, the 2002 CPE Text provides, "As long as the IRC 501(c)(3) organization is a passive recipient of the corporate contributions and does not play any part in the solicitation of the PAC funds, the Charity/PAC matching program will not affect its exempt status." 2002 CPE Text, at 387. (b) The matching contribution to the Section 501(c)(3) organization is not treated as a payment of compensation to the employee followed by a deductible charitable contribution by the employee to the Section 501(c)(3) organization. Rev. Rul. 67-137, 1967-1 C.B. 63; G.C.M. 39,877 (Aug. 27, 1992). (c) A for-profit corporation is not entitled to a charitable deduction for the matching contribution. I.R.C. §162(e)(1)(B) (amounts paid or incurred in connection with participation or intervention in any political campaign on

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		behalf of or in opposition to any candidate for public office are not deductible as ordinary and necessary business expenses); PLR 201616002 (to incentivize employees to contribute to a corporate employer's PAC, employer matches each employee contribution to the PAC with an employer contribution in the name of the employee to one or more charities selected by the employee; matching contributions were not deductible as ordinary and necessary business expenses under Code Section 162); G.C.M. 39,877. REQUIREMENTS FOR TAX-EXEMPTION OF SECTION 501(c)(4) ORGANIZATION 24. (a) A Section 501(c)(4) organization must be "operated exclusively for the promotion of social welfare." I.R.C. §501(c)(4)(A). The Code does not define "social welfare." Under the regulations, promoting social welfare means "primarily engaged in promoting in some way the common good and general welfare of the people of the community. An organization embraced within this section is one which is operated primarily for the purpose of bringing about civic betterments and social improvements." Treas. Reg. §1.501(c)(4)-1(a)(2)(i). The regulations also provide that the "promotion of social welfare does not include direct or indirect participation or intervention in political campaigns on behalf of or in opposition to any candidate for public office." Treas. Reg. §1.501(c)(4)-1(a)(2)(ii).

A GUIDE TO ELECTION YEAR ACTIVITIES OF SECTION 501(C)(3) AND 501(C)(4) ORGANIZATIONS

ACTIVITY	FEDERAL ELECTION CAMPAIGN ACT OF 1971, AS AMENDED ("FECA")	INTERNAL REVENUE CODE OF 1986, AS AMENDED ("I.R.C.")
REGULATORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
		For the authorities on what is or is not social welfare activity, see Rev. Rul. 76-81, 1976-1 C.B. 156 (organization that advocated anti-abortion legislation qualified under Section 501(c)(4)); Rev. Rul. 71-530, 1971-2 C.B. 237 (organization promoted social welfare when it conducted significant research on tax issues, and its members regularly testified at legislative hearings in favor of and against proposed tax legislation; organization promoted "the common good and general welfare of the community by assisting legislators and administrators concerned with tax policy. Such activity helps the legislators and administrators form better judgments about the legislation. The fact that the organization's only activities may involve advocating changes in law does not preclude the organization from qualifying under §501(c)(4) of the Code"); Rev. Rul. 67-368, 1967-2 C.B. 194 (organization whose primary activity was rating candidates for public office was not exempt under Code Section 501(c)(4) because the activity was impermissible campaign activity rather than the promotion of social welfare); Rev. Rul. 67-293, 1967-2 C.B. 185 (organization that promoted legislation on animal rights qualified under Section 501(c)(4)); Rev. Rul. 68-656, 1968-2 C.B. 216 (organization that sought legalization of illegal activity qualified under Section 501(c)(4)). PLR 202022009 (organization was not operated primarily to promote social welfare; television advertisements and

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		mailers that constituted campaign intervention accounted for approximately 60% of a particular year's direct expenditures; television advertisements and mailers that did not express either disapproval for Candidate 1 or approval of Candidate 2 accounted for approximately 30% of that year's direct expenditures; organization did not provide information to show that amounts not included in direct expenditures, such as amounts paid independent contractors for fundraising, legal, and administrative support services should not be proportionately attributable to the television advertisements and printed communications that constituted campaign intervention). PLR 201615014 (organization was not operated primarily to promote social welfare; in Year 1 it spent 100% of its expenditures on the production and distribution of mailers and radio advertisements that encouraged the defeat or election of candidates for public office; in Years 2 and 3 the organization expended 100% of its volunteer time on activities that furthered social welfare by bringing about civic betterments and social improvements through educational campaigns for job promotion and job training of local residents; the organization spent 0% of its funds on these activities and did not intend to expend money on these activities in the future). PLR 201552032 (organization was not operated primarily to promote social welfare; organization's only activity in Year

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		1 was a candidate forum for state party chairman position; organization did not have any other activities and did not make any expenditures). PLR 201424028 (organization was not operated primarily to promote social welfare; organization produced and disseminated advertisements, conducted polling, met with agriculture and business leaders, and disseminated four white papers; organization ran statewide advertisements; three television, one radio, and one print ran in the period leading up to the primary election; one television and two radio in the period leading up to the general election; and two print after the general election; advertisements identified candidates and made positive or negative statements about them, and some contained express statements to vote for a specific candidate; 85% of the expenses for these media buys were incurred for advertisements that ran during the periods leading up to the primary and general elections; education media and production constituted 85% of program service expenses; for the poll organization framed many questions in terms of statements that supported or opposed a candidate; poll included more statements to support G than to support G's challenger, and many more reasons to oppose the challenger than to oppose G; meetings with agriculture and business leaders constituted a small portion of organization's time and resources; white papers were no more than one page; paper on cap and trade policy corresponded to one of the statements given for supporting

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REGULATORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
		G in the opinion poll; paper against driving agricultural production overseas corresponded to one of the reasons given for opposing G's challenger in the opinion poll). PLR 201403019 (organization was not operated primarily to promote social welfare; in Year 1 organization spent approximately 60% percent of its revenue on the production and distribution of a flier that encouraged the defeat of a candidate for public office; the distribution of the flier coincided with an electoral campaign; the flier referred to election day, and identified the candidate's position on a public policy issue important to the organization; in Year 2 the organization spent approximately 87.2 % of its revenue compensating one of its directors for his efforts coordinating its activities, website, fundraising, and placement of public materials concerning the organization's mission; these activities were the production and distribution of the flier, and the operation of the website, both of which were campaign intervention, and the creation of an unaired television advertisement that did not further social welfare purposes). PLR 201214035 (organization was not operated exclusively for the promotion of social welfare when it spent 80% of its time supporting the presidential candidacy of M, the former chairman of the N, a political party in foreign country P; organization influences citizens of P to vote for M by distributing the books U, V, and W, supporting M's policies

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REGULATORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
		and making the public aware of M's policies by maintaining a website, which updates all M related information in real time). See also G.C.M. 33,495 (April 27, 1967) ("There is general agreement that social welfare signifies benefit to the community but beyond that knowledgeable technical people are unable to agree on the meaning of the term. The practical result is that almost any group activity not classifiable under any other provision [of §501(c)], not patently illegal or detrimental to the community and not involving private gain is accorded 'social welfare classification.'"). See generally Erika K. Lunder & L. Paige Whitaker, "501(c)(4)s and Campaign Activity: Analysis Under Tax and Campaign Finance Laws," Congressional Research Service Report R40183 (May 17, 2013); Ellen P. Aprill, "Regulating the Political Speech of Noncharitable Exempt Organizations After Citizens United," 10 Election Law Journal 363 (2011); Roger Colinvaux, "Political Activity Limits and Tax Exemption: A Gordian's Knot," 34 Virginia Tax Review 1 (Summer 2014); Terence Dougherty, "Section 501(c)(4) Advocacy Organizations: Political Candidate-Related and Other Partisan Activities in Furtherance of the Social Welfare," 36 Seattle University Law Review 1337 (Spring 2013); Miriam Galston, "Outing Outside Group Spending and the Crisis of Nonenforcement," 32 Stanford

A GUIDE TO ELECTION YEAR ACTIVITIES OF SECTION 501(C)(3) AND 501(C)(4) ORGANIZATIONS

ACTIVITY	FEDERAL ELECTION CAMPAIGN ACT OF 1971, AS AMENDED ("FECA")	INTERNAL REVENUE CODE OF 1986, AS AMENDED ("I.R.C.")
REGULATORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
		Law & Policy Review 253 (July 2021); Jennifer Mueller, "Defending Nuance in an Era of Tea Party Politics: An Argument for the Continued Use of Standards to Evaluate the Campaign Activities of 501(c)(4) Organizations," 22 George Mason Law Review 103 (Fall 2014). Ellen P. Aprill, "GOP's New Tax Law Encourages Campaign Donor Secrecy," The Hill (March 15, 2018) ("[T]he charitable contribution deduction benefits only those taxpayers who choose to itemize their deductions rather than take the standard deduction. In recent years, approximately 30 percent of taxpayers have itemized their deductions. The new tax legislation, however, made two changes that will drastically reduce the number of taxpayers who itemize. First, it increased the standard deduction to $24,400 for married couples. Second, it limited the deduction for state and local taxes to $10,000, both for married couples and single individuals. . . . For donors not itemizing the deductions, there is no tax disadvantage to giving to a section 501(c)(4) organization instead of a section 501(c)(3) entity. But there are advantages. Tax-exempt section 501(c)(4) organizations can not only do good and lobby legislatures freely on issues important to them, but give considerable support to candidates for election who share their positions on key issues.") (available at http://thehill.com/opinion/finance/378533-gops-new-tax-law-encourages-campaign-donor-secrecy).

A GUIDE TO ELECTION YEAR ACTIVITIES OF SECTION 501(C)(3) AND 501(C)(4) ORGANIZATIONS

ACTIVITY	FEDERAL ELECTION CAMPAIGN ACT OF 1971, AS AMENDED ("FECA")	INTERNAL REVENUE CODE OF 1986, AS AMENDED ("I.R.C.")
REGULATORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
		(b) The IRS has construed Section 501(c)(4) to permit a Section 501(c)(4) organization to engage in campaign activity as long as it is not the organization's primary activity, and the organization complies with election laws. The permissible campaign activities of a Section 501(c)(4) organization include the prohibited campaign activities of a Section 501(c)(3) organization. See Treas. Reg. §1.501(c)(4)-1(a)(2)(i)-(ii); Rev. Rul. 2004-6, 2004-1 C.B. 328, 329 ("Certain broadcast, cable, or satellite communications that meet the definition of 'electioneering communications' are regulated by the Bipartisan Campaign Reform Act of 2002 (BCRA), 116 Stat. 81. An exempt organization that violates the regulatory requirements of BCRA may well jeopardize its exemption or be subject to other tax consequences."); Rev. Rul. 81-95, 1981-1 C.B. 332; G.C.M. 38,215 (Dec. 31, 1979); G.C.M. 36,286 (May 22, 1975); G.C.M. 33,495 (April 27, 1967). Joint Committee on Taxation, Present Law and Background Relating to the Federal Tax Treatment of Political Campaign and Lobbying Activities of Tax-Exempt Organizations (JCX-7-22), at 11-12 (April 29, 2022). See Paragraphs 29 and 30 below for a discussion of the relationship between prohibited campaign activity under Section 501(c)(3) and an exempt function of a Section

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		501(c)(4) organization under Section 527(e)(2) subject to tax under Section 527(f). (c) Under the Section 501(c)(4) regulations, the issue of the extent of permissible campaign activity turns on whether the campaign activity is the organization's primary activity. Many counsel take the position that under the primary activity test, up to 49% of its activities, can be campaign activity. This position may no longer be valid under Memorial Hermann Accountable Care Organization v. Commissioner, 120 F.4th 215 (5th Cir. 2024), discussed in subparagraphs (e) to ( ) below. See Letter of Elizabeth Kingsley & Stephanie N.K. Robbins, Harmon, Curran, Spielberg & Eisenberg, LLP to Committee on Ways and Means, U.S. House of Representatives, at 7 (Sept. 4, 2023) ("That a section 501(c)(4) organization could spend less than 50% of its resources on political activities also makes sense when read in conjunction with section 527. Section 527 describes political organizations that are exempt from federal income tax on political organization taxable income. An organization is a 'political organization' within the meaning of section 527 if it is 'organized and operated primarily for the purpose of directly or indirectly accepting contributions or making expenditures, or both,' in political campaigns. If 'primarily' is interpreted as more than 50%, then an organization that is not primarily engaged in political activities is described in section 501(c)(4), and an

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		organization that is primarily engaged in political activities is described in section 527. However, if 'primarily' is interpreted as 'exclusively,' an entire group of organizations engaging in political activities in amounts between 'insubstantial' and 'primarily' would be taxable. It seems unlikely that this is Congress' intent."). (d) The IRS has successfully taken the position in litigation that campaign activity cannot be more than an insubstantial portion of a Section 501(c)(4) organization's activities. See American Association of Christian Schools Voluntary Employees Beneficiary Association Welfare Plan Trust v. United States, 850 F.2d 1510, 1515-16 (11th Cir. 1988); Mutual Aid Association of the Church of the Brethren v. United States, 759 F.2d 792, 796 (10th Cir. 1985); Contracting Plumbers Cooperative Restoration Corp. v. United States, 488 F.2d 684, 686 (2d Cir. 1973); American Women Buyers Club, Inc. v. United States, 338 F.2d 526, 528 (2d Cir. 1964); People's Educational Camp Society, Inc. v. Commissioner, 331 F.2d 921, 923 (2d Cir. 1964), cert. denied, 379 U.S. 839 (1964); Ocean Pines Association v. Commissioner, 135 T.C. 276, 281 (2010), aff'd, 672 F.3d 284 (4th Cir. 2012); Police Benevolent Association of Richmond, Virginia v. United States, 661 F. Supp. 765, 773 (E.D. Va. 1987), aff'd, 836 F.2d 547 (4th Cir. 1987) (per curiam) (unpublished opinion).

ACTIVITY	FEDERAL ELECTION CAMPAIGN ACT OF 1971, AS AMENDED ("FECA")	INTERNAL REVENUE CODE OF 1986, AS AMENDED ("I.R.C.")
REGULATORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
		See also Better Business Bureau of Washington, D.C., Inc. v. United States, 326 U.S. 279, 283 (1943) (Social Security Act provided an exemption from Social Security taxes for a corporation organized and operated exclusively for scientific or educational purposes; "[I]n order to fall within the claimed exemption, an organization must be devoted to educational purposes exclusively. This plainly means that the presence of a single non-educational purpose, if substantial in nature, will destroy the exemption regardless of the number or importance of truly educational purposes"). Cf. IRS Letter 5228, Applicant Notification of Expedited 501(c)(4) Option (Rev. 9-2013) (IRS instituted an optional expedited process for certain organizations applying for recognition of exemption under Section 501(c)(4); organizations can make representations to the IRS under penalties of perjury regarding their past, current, and future activities and receive a determination letter based on those representations; organization must represent that it has spent and anticipates that it will spend 60% or more of both the organization's total expenditures and total time (measured by employee and volunteer hours) on activities that promote social welfare; organization must also represent that it has spent and anticipates that it will spend 40% or less of both the organization's total expenditures and total time (measured by employee and volunteer hours) on direct or indirect participation or intervention in any political

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		campaign on behalf of (or in opposition to) any candidate for public office) (available at https://www.irs.gov/pub/irs-tege/letter5228.pdf). John Francis Reilly, Carter C. Hull & Barbara A. Brais Allen, IRC 501(c)(4) Organizations, 2003 CPE Text, at I-25 ("Since the test for exemption under IRC 501(c)(4) looks to the organization's primary activities, an organization exempt under IRC 501(c)(4) may engage in substantial non-exempt activities;" "In contrast, under the reasoning of Better Business Bureau . . ., the presence of a single noncharitable purpose, if substantial in nature, will disqualify an organization from 501(c)(3) status."). See generally Miriam Galston, "Outing Outside Group Spending and the Crisis of Nonenforcement," 32 Stanford Law & Policy Review 253, 304 (July 2021) ("[B]oth because the regulations exclude political campaign activity from the purview of social welfare and because political participation represents a private benefit, the campaign activity of §501(c)(4) organizations should not be substantial. This interpretation accords with congressional intent: the legislative history of section 527 notes that this new form of tax-exempt entity would take 'the campaign-type activities . . . entirely out of the section 501(c) organization . . . to the benefit both of the organization and the administration of the tax laws.'") (footnote omitted).

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		(e) In Memorial Hermann Accountable Care Organization v. Commissioner, 120 F.4th 215 (5th Cir. 2024), the court construed the exclusive purpose requirement in the statutory language of Section 501(c)(4)(A). It rejected the primary purpose test and applied the substantial nonexempt purpose test of Better Business Bureau of Washington, D.C., Inc. v. United States, 326 U.S. 279, 283 (1943): This "substantial nonexempt purpose" test governs cases under I.R.C. §501(c)(3). See, e.g., Nationalist Movement, 37 F.3d at 220. Indeed, the SSA provision construed by the Court in Better Business Bureau was "identical in relevant respects to . . . section 501(c)(3)." Alive Fellowship of Harmonious Living v. Commissioner, T.C. Memo. 1984-87, 47 T.C.M. 1134, 1140 (T.C. 1984). This case involves §501(c)(4), which exempts entities "operated exclusively for the promotion of social welfare." Although that provision and §501(c)(3) both use the exact same phrase of "operated exclusively" which was interpreted by the Supreme Court in Better Business Bureau, MHACO argues that Better Business Bureau does not apply here. MHACO contends that the proper test is found in 26 C.F.R. §1.501(c)(4)-1(a)(2)(i), a Treasury Department regulation, which provides that an organization is eligible for exemption under §501(c)(4) if it is "primarily engaged in promoting in some way the common good and general

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		welfare of the people of the community." MHACO calls this the "primary purpose" test. We disagree. It makes little sense to treat the same phrase differently in two neighboring paragraphs of the same statute. . . . . Since §501(c)(3) and §501(c)(4) both use the crucial phrase "operated exclusively," the Better Business Bureau standard applies under both provisions. [120 F.4th at 218-20] See also Richard Rubin & Maggie Severns, "Court Ruling Threatens to Curb Billions in Political 'Dark Money,'" WSJ.com (Oct. 30, 2024) ("A federal appeals court narrowed the tax rule that has let conservative and liberal groups pour billions of dollars into political campaigns without disclosing their donors, and the case could restrict the flow of so-called dark money into politics.") (available at https://www.wsj.com/politics/policy/court-ruling-threatens-to-curb-billions-in-political-dark-money-77f1fb33). (f) Under Memorial Hermann, in addition to the limitation that the Section 501(c)(4) organization's campaign activity, by itself, cannot be more than a substantial activity, the campaign activity, together with all the other organization's nonsocial welfare activities, cannot be more than a

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		substantial activity. Other nonsocial welfare activities are investment activities, unrelated trade or business activities, social activities for members, and activities for the private benefit of members. (g) One commentator provides the following analysis of the potential application of Memorial Hermann to a Section 501(c)(4) organization's campaign activity and the effect on its tax-exempt status: If other circuits follow the Fifth Circuit's lead to reject taxpayer reliance on the section 501(c)(4) regulations, the consequences under section 501(c)(4) and section 527 would depend on whether campaign intervention is deemed to be a form of social welfare. If it is, section 501(c)(4) organizations may not face limits under section 501(c)(4) but would be able to continue to engage only in 49% or a little more of campaign intervention. A greater percentage would risk their becoming a political organization under section 527's "primarily" requirement. If, however, campaign intervention were deemed not to be a form of social welfare, *BBB*'s "substantial purpose" test would limit section 501(c)(4) organizations to some smaller percentage of campaign intervention, perhaps up to 20% of activity. If so, organizations that engage in such activity above that ceiling, but less than primarily, would exist in tax-exemption limbo. They would no longer qualify as tax-

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		exempt section 501(c)(4) entities, but neither would they be eligible for section 527's exemption. They would likely become taxable entities, without the obligation to file Form 990, the annual information return required for almost all tax-exempt organizations, which is available to the public. [Ellen P. Aprill, "*Memorial Hermann*: Rejecting Pro-Taxpayer Regulations Under *Loper Bright*," UCLA School of Law Public Law & Legal Theory Research Paper Series No. 2025-33, at 16-17 (footnotes omitted), reprinted in 79 Tax Lawyer 1, 6 (American Bar Association Fall 2025)] 25. (a) In Rev. Proc. 2018-38, 2018-31 I.R.B. 1, the IRS provided that a Section 501(c)(4) organization for taxable years ending on or after December 31, 2018 was not required to provide the names and addresses of contributors, and was not required to complete these portions of Schedule B. The organization had to continue to keep this information in its books and records to permit the IRS to efficiently administer the internal revenue laws through examinations of specific taxpayers. Even though Section 501(c)(4) organizations were not required to provide donor names and addresses on Schedule B, they were still required to complete the Schedule B itemizing the amounts of contributions from donors who give $5,000 or more in a year. (b) Section 501(c)(3) organizations and Section 527 organizations had to continue to disclose their substantial

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		contributors on Schedule B of the Form 990 series. Substantial contributors are those who contribute $5,000 or more in money or property in a year. I.R.C. §§6033(b) (Section 501(c)(3) organizations) and 6104(b) (Section 527 organizations). (c) In Bullock v. Internal Revenue Service, 401 F. Supp. 3d 1144 (D. Mont. 2019), the court held that in issuing Rev. Proc. 2018-38 the IRS failed to satisfy the public notice-and-comment requirement of the Administrative Procedure Act. An agency must satisfy this requirement when a new legislative rule creates rights, imposes obligations, or effects a change in existing law. 5 U.S.C. §553(b)-(c); Erringer v. Thompson, 371 F.3d 625, 629 (9th Cir. 2004). A legislative rule has the force of law, which occurs in three situations. First, in the absence of the rule, there would not be an adequate legislative basis for enforcement action. Second, the agency explicitly invokes its general legislative authority. Third, the rule effectively amends a prior legislative rule. Hemp Industries Association v. Drug Enforcement Administration, 333 F.3d 1082, 1087 (9th Cir. 2003). (d) The Internal Revenue Code requires that all tax-exempt organizations file a return "stating specifically the items of gross income, receipts, and disbursements, and such other information for the purposes of carrying out the internal revenue laws as the Secretary may by forms or regulations

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		prescribe." I.R.C. §6033(a)(1). The IRS promulgated a regulation in the Federal Register in 1970, following a public notice-and-comment period, that required exempt organizations to disclose the total of contributions, gifts, grants, and similar amounts received, and the names and addresses of all persons who contributed, bequeathed, or devised $5,000 or more in money or property. Treas. Reg. §1.6033-2(a)(ii)(F). (e) Rev. Proc. 2018-38 changed the information required to be reported to the IRS by tax-exempt organizations. Tax-exempt organizations "will no longer be required to provide the names and addresses of contributors," and "will not be required to complete these portions of their Schedules B." (f) The court held that Rev. Proc. 2018-38 explicitly upended nearly fifty years of IRS practice and effectively amended the existing legislative rule. Accordingly, the IRS had to comply with the notice-and-comment rulemaking procedures. (g) On May 26, 2020, upon compliance with the notice-and-comment rulemaking procedures, the IRS issued its final regulation amending Treas. Reg. §1.6033-2(a)(2)(ii)(F). The final regulation provides that only Section 501(c)(3) organizations must provide the names and addresses of all persons that contributed, bequeathed, or devised $5,000 or more (in money or other property) during the taxable year

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		on their Forms 990, 990-EZ, and 990-PF. In addition, under Treas. Reg. §1.6033-2(g)(1)(iii), organizations that are exempt under Section 501(a), other than private foundations and supporting organizations, that normally have less than $50,000 in gross receipts annually are not required to file returns. Dept. of the Treasury, Internal Revenue Service, "Guidance Under Section 6033 Regarding the Reporting Requirements of Exempt Organizations," 85 F.R. 31,959, 31,968 (May 28, 2020). (h) The IRS also issued Treas. Reg. §1.6033-2(a)(5) to provide that political organizations, as defined in Section 527(e)(1), that have gross receipts of $25,000 or more for the taxable year (or in the case of a qualified State or local political organization, as defined in Section 527(e)(5), that has gross receipts of $100,000 or more for the taxable year) generally must comply with the requirements of Section 6033(a)(1) and (g) and Treas. Reg. §1.6033-2 in the same manner as organizations exempt from tax under Section 501(a). In addition to these reporting requirements, such political organizations generally must report the names and addresses of all persons that contributed, bequeathed, or devised $5,000 or more (in money or other property) during the taxable year on their Forms 990 or 990-EZ. 85 F.R. at 31,968. (i) The final regulation does not change the existing requirement under Schedule B of Form 990 and 990-EZ for

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		tax-exempt organizations to annually report the amounts of contributions from each substantial contributor, or the existing requirement under I.R.C. §6001 and Treas. Reg. §1.6001-1(a) and (c) to maintain the names and addresses of substantial contributors in their books and records should the IRS need this information on examinations of specific taxpayers. 85 F.R. at 31,962 and 31,966. (j) The IRS provided the following reasons for its final regulation. The IRS does not need the names and addresses of substantial contributors to tax-exempt organizations not described in Section 501(c)(3) to be reported annually on Schedule B of Form 990 or 990-EZ to administer the internal revenue laws. For the specific purpose of evaluating possible private benefit or inurement or other potential issues relating to qualification for exemption, the IRS can obtain sufficient information from other information on Form 990 or 990-EZ, and can obtain the names and addresses of substantial contributors, along with other information, as needed. 85 F.R. at 31,963. (k) Reporting the names and addresses of substantial contributors on an annual basis poses a risk of inadvertent disclosure of information that is not open to public inspection. Information on Schedule B generally must be redacted from an otherwise disclosable information return. The IRS has experienced incidents of inadvertent disclosure and has taken other steps to reduce future occurrences of

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		such disclosures. By removing the general requirement to report names and addresses of substantial contributors to tax-exempt organizations not described in Section 501(c)(3), the final regulation further reduces the risk of inadvertent disclosure. 85 F.R. at 31,963. (l) By reducing the risk of inadvertent disclosure, the IRS addressed concerns that supporters of certain causes or organizations face possible reprisals, such as harassment, threats of violence, or economic retribution, if their status as contributors is revealed publicly. The IRS also addressed the concern that fear of exposure or reprisal may have a chilling effect of discouraging or deterring potential contributors from giving to certain tax-exempt organizations and reducing public participation in organizations benefiting the social welfare. 85 F.R. at 31,963-64. (m) The final regulation will obviate the need for an affected tax-exempt organization to redact name and address information if the organization must provide its Schedule B to a member or the public if requested under Section 6104(b). Particularly for smaller tax-exempt organizations with limited resources, few dedicated staff, and less access to advisors regarding the rules governing tax-exempt organizations, eliminating this requirement will be beneficial. Similarly, the potential burden on the IRS associated with redacting Schedule B information is

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		lessened when fewer organizations are required to report names and addresses on Schedule B. 85 F.R. at 31,964. (n) Finally, enforcement of the campaign finance laws did not warrant the reporting of names and addresses for tax-exempt organizations other than Section 501(c)(3) and 527 organizations. Congress has not authorized the IRS to enforce campaign finance laws; Schedule B reflects the enforcement needs related to the Internal Revenue Code. Furthermore, Code Section 6103 generally prohibits the IRS from disclosing any names and addresses of organizations' substantial contributors to federal agencies for nontax investigations, including campaign finance matters, except in narrowly prescribed circumstances. 85 F.R. at 31,965. (o) With respect to coordination with the FEC, Section 30111(f) of Title 52 does not require the IRS to consult with the FEC on regulations issued by the IRS. Instead, Section 30111 authorizes the FEC to prescribe rules, regulations, and forms to carry out the Federal Election Campaign Act, and requires the FEC to consult with the IRS when prescribing such rules. The final regulation is prescribed by the IRS, not the FEC, and it is prescribed under Section 7805 of Title 26, not Section 30111 of Title 52. 85 F.R. at 31,965. (p) The exemption from the requirement to report the names and addresses of persons who contributed $5,000 or more

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		applies to information returns filed after May 28, 2020. An organization may elect to apply the exemption to returns filed after September 6, 2019. Treas. Reg. §1.6033-2(l)(2). (q) In an April 27, 2021 letter to Janet Yellen, Secretary of the Treasury, and Charles P. Rettig, Commissioner of the Internal Revenue Service, thirty-eight Democratic Senators urged the Treasury Department and Internal Revenue Service "to reverse the Trump Administration's decision to eliminate disclosure requirements for certain tax-exempt organizations that engage in political activity. As it stands, this policy weakens federal tax laws, campaign finance laws, and longstanding efforts to prevent foreign interference in U.S. elections" (available at https://news.blooombergtax.com/daily-tax-report-state/treasury-urged-by-senators-to-restore-donor-disclosure-rules). (r) In a May 26, 2021 letter to Janet Yellen, Secretary of the Treasury, and Charles P. Rettig, Commissioner of the Internal Revenue Service, thirty-two Democratic Members of Congress expressed the same sentiments as the prior letter of the Democratic Senators (available at https://teddeutch.house.gov/uploadedfiles/2021.05.26_ltr_irs_treasury_501c_dislosures.pdf). Compare Miriam Galston, "Outing Outside Group Spending and the Crisis of Nonenforcement," 32 Stanford Law &

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		Policy Review 253, 314-15 (July 2021) ("The agency explained eliminating the significant donor disclosure, saying that the information was unnecessary 'for the efficient administration of the Internal revenue laws' and burdened the IRS with the responsibility to redact this information when making Form 990 available for public scrutiny. This claim is puzzling since disclosure of significant donors on Schedule B would facilitate the IRS's ability to identify potential violations of the private benefit and private inurement rules. The agency's decision also makes it easier for foreign persons, who are prohibited by law from funding U.S. election activities, to intervene financially in American elections without detection by using tax-exempt intermediaries to hide their support. The agency's decision could also obstruct efforts to discover if politically active tax-exempt organizations are being used to circumvent campaign contribution limits.") (footnotes omitted) and Written Testimony of Philip Hackney, Associate Professor of Law, University of Pittsburgh School of Law, U.S. Senate Finance Committee Subcommittee on Taxation and IRS Oversight, Laws and Enforcement Governing the Political Activities of Tax-Exempt Entities, at 13-14 and 14 n. 105 (May 4, 2022) ("To police the [prohibition against private inurement], the IRS needs to know substantial contributors because these are individuals who can control the organization. The IRS has no reliable way to know this information without the exempt

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REGULATORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
		organization directly disclosing it to the IRS. Substantial donors are not public facing in the way officers and directors of a nonprofit corporation are public facing. The same goes for enforcing the excess benefit transaction tax imposed for charities and social welfare organizations. The IRS needs to know the individuals who control the organization and substantial contributors fall into this category. The IRS cannot truly enforce this tax Congress imposed without the information. Substantial contributor information can aid the IRS in enforcing the private benefit limitation as well. Finally, if the IRS wants to keep track of related dark money organizations that might try to avoid the primarily test by working in tandem to maximize the amount of money they can use to engage in political campaign intervention, Schedule B can provide essential information to see such relationships.") (footnotes omitted) ("The idea here is a donor could contribute $1 million to a social welfare organization. That first social welfare organization could spend 49% on political campaign intervention and send 50% of the money to another social welfare organization. That second organization does the same thing. Via this strategy, the organization theoretically is accomplishing social welfare organization purposes through contributions to another social welfare organization but is indeed almost exclusively accomplishing political campaign activity. It is hard to see how such a scheme could be considered to qualify under section 501(c)(4), but without the donor

ACTIVITY	FEDERAL ELECTION CAMPAIGN ACT OF 1971, AS AMENDED ("FECA")	INTERNAL REVENUE CODE OF 1986, AS AMENDED ("I.R.C.")
REGULATORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
		information on Schedule B it should be much more difficult for the IRS to detect such transactions. Schedule I to the Form 990 [disclosure of grants and other assistance to organizations, governments, and individuals in the U.S.] helps in part but the Schedule B combined with the Schedule I would enable the IRS to see such transactions quicker and more reliably.") and Roger Colinvaux, "How the IRS's Stance on Donor Disclosure Corrupts the Nonprofit World," The Chronicle of Philanthropy (July 26, 2018) ("First, nondisclosure of donor information will make it easier for foreign nationals to intervene illegally in U.S. elections. Many tax-exempt groups are deeply involved in the U.S. political process and spend heavily each election cycle on behalf of candidates. Nondisclosure of donors means that the government will no longer know who is financing the political activity of those groups. A foreign national (say, a Russian) could contribute millions of dollars to a social-welfare organization that spends up to half of its money on campaigns. The source of its funding will be a mystery. . . . Second, dropping donor disclosure entrenches the use of nonprofits for 'dark money' while highlighting the irrational inconsistency of current law. Donors to PACs and Super PACs have long been made public because of the risk of corruption; donors that do the same thing by giving to other types are now completely secret. Thus, the IRS's change is an open invitation to use nonprofits for dark money, which will lead to further loss of the public's trust in all nonprofits.

A GUIDE TO ELECTION YEAR ACTIVITIES OF SECTION 501(C)(3) AND 501(C)(4) ORGANIZATIONS

ACTIVITY	FEDERAL ELECTION CAMPAIGN ACT OF 1971, AS AMENDED ("FECA")	INTERNAL REVENUE CODE OF 1986, AS AMENDED ("I.R.C.")
REGULATORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
		Third, nondisclosure of donor information will facilitate the improper use of charitable donations for political purposes, which will further undermine trust in charities. Politically motivated donors in search of a tax deduction will find it much easier to flow political money through charities to social-welfare groups. Previously, if a 501(c)(4) spent heavily on elections, the IRS could simply check the group's return to see whether any of the money came from a charity and decide whether to investigate further. But now, the IRS will be effectively clueless, making it much harder to track whether charitable money is being used for politics. As a result, we should expect that more dark money will flow through charities, some of which will be created for the purpose of laundering tax-deductible money. Fourth, nondisclosure of donor information will facilitate the wholesale corruption of nonprofit organizations to advance donor interests instead of nonprofit interests. For example, many 501(c)(4)s run significant businesses on behalf of their members (offering insurance products, for instance). Not much imagination is required to think that a company might donate to the nonprofit (which, wink, wink, coincidentally leads to an increase in salaries of top nonprofit personnel) in exchange for the nonprofit using the company's services, perhaps at noncompetitive prices. Self-dealing relationships like this are easier to spot if the IRS knows the identity of donors. . . . The fear of harassment from political opponents, the press, and others would be somewhat sympathetic if

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REGULATORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
		there was evidence of widespread harm from an epidemic of unauthorized disclosures, but there is not such evidence. Further, concerns about the IRS deliberately misusing the information are just a convenient and partisan justification for the change, and without merit. (Notably, donor fear of harassment does not prevent the public disclosure of political contributions, which has long been held to be in the public interest to prevent corruption.)") (available at https://www.philanthropy.com/article/Opinion-How-the-IRS-s/244035) with Luke Wachob, "Protecting Privacy of Nonprofit Donors Is Key to Our Democracy," The Hill (July 28, 2018) ("The IRS recently dealt a blow to efforts to violate nonprofit privacy when it announced that it would no longer collect the names and addresses of donors to many nonprofits. In response, critics are outraged that this policy change opens the door to foreign spending in our American elections. That charge could not be more of the mark. . . . First, nonprofits can accept money from foreign sources, but they are legally prohibited from using it to support the election or defeat of candidates. The ban also applies to broadcast ads that mention the name of a candidate in the time near an election. Second, a donor name and address does not tell you whether it is a U.S. citizen or green card holder. Many Americans live abroad, and many people in the United States are not citizens or legal permanent residents. . . . The Federal Election Commission, which is the agency actually in charge of enforcing campaign finance

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REGULATORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
		laws, did not have access to the donor names collected by the IRS. Nor is the Federal Election Commission a major player in preventing foreign spending in elections. The Treasury Department handles the bulk of that task through the Bank Secrecy Act.") (available at http://thehill.com/opinion/campaign/399336-privacy-in-nonprofit-political-spending-key-to-democracy). 26. (a) In Americans for Prosperity Foundation v. Bonta, 141 S. Ct. 2373 (2021), the Attorney General of California by regulation required charitable organizations renewing their registration to file copies of their Internal Revenue Service Form 990 as a condition of being legally able to solicit contributions in the state. The Schedule B of this form required the organizations to disclose the names and addresses of donors who contributed more than $5,000 in a taxable year. (b) In a majority opinion written by Justice Roberts, the Court applied exacting scrutiny and struck down this requirement as facially invalid under the First Amendment as a violation of a charitable organization's freedom of association. The disclosure requirement created an unnecessary risk of a chilling effect on donors by indiscriminately sweeping up the information of every major donor with reason to remain anonymous. California was unable to ensure the confidentiality of donors' information, and donors and potential donors would be reasonably

ACTIVITY	FEDERAL ELECTION CAMPAIGN ACT OF 1971, AS AMENDED ("FECA")	INTERNAL REVENUE CODE OF 1986, AS AMENDED ("I.R.C.")
REGULATORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
		justified in a fear of disclosure. The plaintiff organizations introduced evidence that they and their supporters were subjected to bomb threats, protests, stalking, and physical violence. (c) The Court held that exacting scrutiny requires that there be a substantial relation between the disclosure requirement and a sufficiently important government interest, and that the disclosure requirement be narrowly tailored to the interest it promoted. The strength of the governmental interest must reflect the seriousness of the actual burden on First Amendment rights. Exacting scrutiny requires a fit that is not necessarily perfect, but reasonable. A substantial relation is necessary but not sufficient, and the challenged requirement must also be narrowly tailored to the interest it promotes. (d) The Court found, "The upshot is that California casts a dragnet for sensitive donor information from tens of thousands of charities each year, even though that information will become relevant in only a small number of cases involving filed complaints. California does not rely on Schedule Bs to initiate investigations, and in all events, there are multiple alternative mechanisms through which the Attorney General can obtain Schedule B information after initiating an investigation." 141 S. Ct. at 2387.

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REGULATORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
		(e) The Court also held, "[C]alifornia's demand for Schedule Bs cannot be saved by the fact that donor information is already disclosed to the IRS as a condition of federal tax-exempt status. For one thing, each governmental demand for disclosure brings with it an additional risk of chill. For another, revenue collection efforts and conferral of tax-exempt status may raise issues not presented by California's requirement, which can prevent charities from operating in the State altogether." 141 S. Ct. at 2387. (f) Justice Sotomayor, in a dissent joined in by Justices Breyer and Kagan, argued that the majority failed to recognize the importance of the government interest at issue. The government had a sufficiently important interest in the effective operation of state agencies. Audit letters and subpoenas can alert charities to an investigation and lead them to hide assets and destroy documents. The government's interest in preventing persons and entities under investigation from engaging in this conduct was sufficiently important to require charities to disclose their donors. 141 S. Ct. at 2401-02. (g) California, New Jersey, and New York no longer require the submission of IRS Form 990 Schedule B or disclosure information that identifies donors. New York State Register, Department of Law, Notice of Adoption, Requirements for Contents of Annual Financial Reports to the Law Department for Public Charities, at 19-20 (March

ACTIVITY	FEDERAL ELECTION CAMPAIGN ACT OF 1971, AS AMENDED ("FECA")	INTERNAL REVENUE CODE OF 1986, AS AMENDED ("I.R.C.")
REGULATORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
		16, 2022); Nonprofit Law Prof Blog, "First Effects of the AFPF Donor Disclosure Decision and Additional Analysis," Sept. 1, 2021 (available at https://lawprofessors.typepad.com/nonprofit/2021/09/first-effects-of-the-afpf-donor-disclosure-decision-and-additional-analysis.html). Compare Letter to the Editor of Tax Notes Federal from Professor Ellen P. Aprill, Loyola Law School, July 6, 2021 ("Contributions to section 501(c)(3) organizations, unlike those to almost all other section 501(c) organizations, are deductible from income, estate, and gift taxes. Schedules B that include names and addresses thus assist the IRS in ensuring that the proper amounts of charitable contributions are deducted. Perhaps Schedule B's utility in ensuring accurate revenue collection is sufficient to shield it from constitutional invalidity. But I doubt it under the reasoning of Americans for Prosperity;" the exacting scrutiny standard of review appears to apply to any government-required disclosure; as with noncharitable section 501(c) organizations, the IRS can obtain names and addresses of substantial contributors on examination as needed; therefore as a result the IRS has already announced a readily available, more narrowly tailored alternative) (available at https://www.taxnotes.com/tax-notes-federal/exempt-organizations/americans-prosperity-and-future-schedule-b/2021/07/12/76rph) with Andrew Langer, "Supreme Court Protects First Amendment by Protecting Donor Privacy,"

A GUIDE TO ELECTION YEAR ACTIVITIES OF SECTION 501(C)(3) AND 501(C)(4) ORGANIZATIONS

ACTIVITY	FEDERAL ELECTION CAMPAIGN ACT OF 1971, AS AMENDED ("FECA")	INTERNAL REVENUE CODE OF 1986, AS AMENDED ("I.R.C.")
REGULATORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
		RealClear Policy (July 22, 2021) ("When people give money to charitable organizations, they often become a target of opponents of those groups. Americans for Prosperity Foundation knows this fact all too well. When the State of California exposed its list of over 350,000 donors, they and their family members and associates reportedly faced harassment and even death threats. Planned Parenthood faced the same privacy violation from California and in the earlier stages of the AFPF lawsuit, Federal Judge Manuel Real wrote that an investigator for the attorney general 'admitted that posting that kind of information publicly could be very damaging to Planned Parenthood.'") (available at https://www.realclearpolicy.com/articles/2021/07/22/supreme_court_protects_first_amendment_by_protecting_donor_privacy_786582.html) and Bradley A. Smith, "Americans for Prosperity Foundation v. Bonta: A First Amendment for the Sensitive," Cato Supreme Court Review 63, 88 (2020-2021) ("Buckley differentiated NAACP and its progeny from the campaign finance disclosure provisions of FECA by noting three compelling state interests: enforcement, prevention of corruption, and a narrow informational interest in knowing the organizations a candidate was most likely to prioritize. Those interests simply were not present in AFPF, but presumably they still are when the state demands disclosure of contributions to political campaigns.") and Bradley A. Smith, Institute for Free Speech, "Americans for Prosperity

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REGULATORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
		Foundation v. Bonta: Questions and Answers," at 4-5 and 7 (Aug. 2021) ("The ruling does not throw all campaign finance disclosure laws into doubt and, indeed, does not question the bona fides of core campaign finance disclosure: the compelled disclosure of large contributions to PACs, political parties, and candidate campaigns. It does, however, cast further doubt on already constitutionally dubious efforts to expand compulsory disclosure into the realm of issue speech, grassroots advocacy, and the general discussion of public affairs, even if such discussion relates to candidates.") ("It is hard to say how the courts would respond to a challenge to the IRS's Schedule B filing requirement. Such a challenge would now be analyzed under the AFPF framework, meaning the IRS would have to show an important need for the information and that the demand was narrowly tailored. However, as 501(c)(3) donors claim a tax deduction, the IRS would likely argue that the information is needed to ensure tax compliance – i.e., that the donations claimed by individual filers are actually received by charities. Given the potential revenue consequences, and a more direct connection between the information sought and the potential fraud than existed under California's policy, courts might still uphold the rule, as the majority appears to suggest.") (available at https://www.ifs.org/research/afpf-v-bonta-primer/). See also Bradley A. Smith, Institute for Free Speech, "Americans for Prosperity Foundation v. Bonta: Questions

ACTIVITY	FEDERAL ELECTION CAMPAIGN ACT OF 1971, AS AMENDED ("FECA")	INTERNAL REVENUE CODE OF 1986, AS AMENDED ("I.R.C.")
REGULATORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
		and Answers," at 4-5 and 7 (Aug. 2021) ("[A] compulsory disclosure law that is not narrowly tailored is unconstitutional without a specific showing of threats, boycotts, or harassment. But even if a statute or policy meets the narrow tailoring requirement, an organization may be granted relief – specific to the organization's circumstance – by demonstrating a record or high probability of threats, boycotts, harassment, or violence. If the law or policy is not narrowly tailored, such evidence is not required."); Emma Waitzman, "Free Ride on the Freedom Ride: How 'Dark Money' Nonprofits Are Using Cases From the Civil Rights Era to Skirt Disclosure Laws," 100 Texas Law Review 115, 150 (Nov. 2021) ("The ruling in Bonta differs from precedent by starting with a tailoring analysis rather than assessing burden, as was the approach in NAACP v. Alabama and its progeny. As Justice Sotomayor stated in her dissent, the majority 'depart[ed] from the traditional, nuanced approach to First Amendment challenges, whereby the degree of means-end tailoring required is commensurate to the actual burden on associational rights.' By applying a heightened level of tailoring, 'no matter if the burdens . . . are slight, heavy, or nonexistent,' the Bonta decision will have the practical effect of making it easier for dark money nonprofits to eliminate disclosure requirements.") (footnotes omitted). (h) In Buckeye Institute v. Internal Revenue Service, 2023 WL 7412043 (S.D. Ohio Nov. 9, 2023), interlocutory appeal

ACTIVITY	FEDERAL ELECTION CAMPAIGN ACT OF 1971, AS AMENDED ("FECA")	INTERNAL REVENUE CODE OF 1986, AS AMENDED ("I.R.C.")
REGULATORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
		certified, 2024 WL 770872 (S.D. Ohio Feb. 26, 2024), the court denied both sides' motions for summary judgment in a challenge to the constitutionality of the reporting requirements for Section 501(c)(3) organizations. Under I.R.C. §6033(b)(5), many Section 501(c)(3) organizations must annually disclose to the Secretary of the Treasury the total of the contributions and gifts received by it during the year, and the names and addresses of all substantial contributors. A substantial contributor is a donor who contributes an aggregate total of $5,000 per taxable year if the contributed amount is more than two percent of the total contributions the organization receives in a taxable year.. I.R.C. §507(d)(2)(A). Section 501(c)(3) organizations comply with this requirement by completing and filing Schedule B to Form 990. Although Schedule Bs must be made available to the public at such times and in such places as the Secretary may prescribe, the Secretary may not disclose the name or address of any contributor to any organization. In other words, the Secretary must make redacted Schedule Bs available to the public. (i) The court held that under Bonta the standard of review was exacting scrutiny. The disclosure obligation was a compelled disclosure that warranted exacting scrutiny review. If a charitable organization does not disclose its substantial donors, it may not receive the benefit of 501(c)(3) status. This was not an example of the government insisting that public funds be spent for the

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REGULATORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
		purposes for which they were authorized, but the government denying 501(c)(3) tax benefits entirely to organizations that resist the disclosure requirement. If the disclosure requirement is unconstitutional, it would be an unconstitutional condition on receipt of the tax benefits. (j) The court held that the issue of the constitutionality of the disclosure requirement under exacting scrutiny was inappropriate for summary judgment and subsequently certified its order for interlocutory appeal. The Sixth Circuit Court of Appeals heard oral argument on April 29, 2026. See also Roger Colinvaux, "Associational Rights versus Nonprofit Transparency: Information Reporting in the Internet Age," 2025 University of Illinois Law Review 1353, 1393-94 ("[T]he Court's disparagement [in Bonta] of an 'ease of administration' purpose to support compelled disclosure is hard to assess in the tax compliance context. Congress grants the Secretary considerable authority to collect information for purposes of administering the revenue laws. In the exempt organization context, for Section 501(c)(3) organizations in particular, associational information clearly is important for enforcing the operational test. Transactions with related parties and insiders (including substantial contributors), names of board members and officers, grantee information, qualitative descriptions of mission and programs, and compensation information, all directly further the IRS's ability to assess

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REGULATORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
		compliance and ensure that the organization is operated exclusively for exempt and not private purposes. Further, while a single item of information may not be necessary standing alone, the goal of information collection is to gain a comprehensive picture of the organization's activities, networks, and programs. Without upfront collection of associational information, the IRS would be unaware of important facts that could provide the basis for an audit. Thus, even if the IRS does not have a robust enforcement presence, the 'harvesting' of information is a necessary predicate for enforcement.") (footnotes omitted). 27. (a) The IRS looks at all the facts and circumstances to determine an organization's primary activity. Rev. Rul. 68-45, 1968-1 C.B. 259. The most important are the portion of annual gross revenues and total expenses used for the organization's campaign activities and social welfare activities, and the number of beneficiaries of each activity. People's Educational Camp Society, Inc. v. Commissioner, 331 F.2d 923, 931 (2d Cir. 1964), cert. denied, 379 U.S. 389 (1964); Rev. Rul. 68-45, 1968-1 C.B. 259; PLR 201224034 (determination of primary purpose is a facts and circumstances test; the pertinent factors are the manner in which the organization's activities are conducted; the resources used in conducting the activities; the time devoted to activities by employees and volunteers; and the amount of

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REGULATORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
		funds received from and devoted to particular activities); T.A.M. 200245064 (Nov. 8, 2002). Raymond Chick & Amy Henchey, "Political Organizations and IRC 501(c)(4)," IRS FY 1995 Exempt Organizations Continuing Professional Education Technical Instruction Program Textbook, at 2 (determination of Section 501(c)(4) organization's primary activity is a facts and circumstances test; the relevant factors are "the amount of funds received from and devoted to particular activities; other resources used in conducting such activities, such as buildings and equipment; the time devoted to activities (by volunteers as well as employees); the manner in which the organization's activities are conducted; and the purposes furthered by various activities."); Schedule C of IRS Form 990 (Section 501(c)(4) organization must file an annual information return on Form 990 with the IRS; on Schedule C of Form 990 the organization must: (a) describe its direct and indirect political campaign activities; (b) report the amount spent conducting campaign activities and the number of hours that volunteers spent to conduct the activities; (c) report the amount directly spent for certain political activities and the amounts contributed to other organizations for the activities; (d) report whether a Form 1120-POL (the tax return filed by organizations that owe the Section 527(f) tax) was filed for the year; and (e) report the name, address, and employer identification number of each Section 527 organization (e.g., a PAC or Super PAC) to which the Section 501(c)(4)

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REGULATORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
		organization made payments and the amount of the payments, and state whether the amounts were paid from internal funds or were contributions received and directly transferred to a separate political organization) (available at http://www.irs.gov/pub/irs-pdf/f990sc.pdf). (b) Under Memorial Hermann Accountable Care Organization v. Commissioner, 120 F.4th 215 (5th Cir. 2024), the substantial nonexempt purpose test applies instead of the primary purpose test. The IRS will likely consider the same facts and circumstances described in subparagraph (a) for the primary purpose test in applying the substantial nonexempt purpose test. 28. (a) A Section 501(c)(4) organization can expend funds for campaign activity in two ways: it can expend funds from its general treasury; or it can form a separate segregated fund or PAC that expends the PAC's funds. (b) With the first method, the Section 501(c)(4) organization is subject to tax on the lesser of: (i) its net investment income for the taxable year (income from dividends, interest, rents, royalties, and gains from the sale or exchange of capital assets, less the investment management expenses and other costs incurred in producing the investment income, and losses from the sale or exchange of capital assets); and (ii) the amount expended on an exempt function in the taxable year. Tax is imposed at the highest corporate

ACTIVITY	FEDERAL ELECTION CAMPAIGN ACT OF 1971, AS AMENDED ("FECA")	INTERNAL REVENUE CODE OF 1986, AS AMENDED ("I.R.C.")
REGULATORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
		rate under Code Section 11(b). For taxable years beginning after December 31, 2017, the highest corporate rate is 21%. I.R.C. §527(f)(1)-(2). Accordingly, if a Section 501(c)(4) organization has investment income, conducting political activity will likely trigger a tax liability. Furthermore, any exception to the definition of exempt function is a source of tax savings. The major exceptions are for expenditures otherwise allowable under FECA or similar state statute, and indirect expenses. (c) The purpose of the tax is to ensure that tax-free investment income is not used to pay for exempt functions. In this manner, Section 527 political organizations and Section 501(c) organizations have similar tax treatment for their political activities. The tax applies regardless of whether there is any direct tracing of the Section 501(c) organization's investment income to an exempt function expenditure. Any investment income of a Section 501(c) organization that is already subject to unrelated business income tax is disregarded so that it is not taxed twice. I.R.C. §527(f)(2). See generally Roger Colinvaux, "Political Activity Limits and Tax Exemption: A Gordian's Knot," 34 Virginia Tax Review 1 (Summer 2014); Nancy E. McGlamery & Rosemary E. Fei, "Taxation With Reservations: Taxing

ACTIVITY	FEDERAL ELECTION CAMPAIGN ACT OF 1971, AS AMENDED ("FECA")	INTERNAL REVENUE CODE OF 1986, AS AMENDED ("I.R.C.")
REGULATORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
		Nonprofit Political Expenditures After Citizens United," 10 Election Law Journal 449 (2011). (d) An exempt function means influencing or attempting to influence the selection, nomination, election, or appointment of any individual to any federal, state, or local public office or office in a political organization, or the election of Presidential or Vice Presidential electors, regardless of whether the individual or electors are selected, nominated, elected, or appointed. I.R.C. §527(e)(2). An exempt function also includes expenditures relating to a public office that, if made by the officeholder, would be deductible business expenses of the officeholder under Code Section 162(a). Id. Under the regulations, an exempt function includes all activities that are directly related to and support these functions. Treas. Reg. §1.527-1(c)(1). (e) Exempt functions include not only attempts to influence voting for elective or political offices, but also attempts to influence selections or appointments of individuals to nonelective public or political offices. Thus, the scope of exempt functions is broader than the campaign activities prohibited for Section 501(c)(3) organizations, and the activities that are not treated as exempt social welfare activities of a Section 501(c)(4) organization. This broader scope increases the risk that an organization's activities will be an exempt function that triggers the Section 527(f) tax. Cf. Treas. Reg. §1.527-6(b)(4) (exemption for an appearance

ACTIVITY	FEDERAL ELECTION CAMPAIGN ACT OF 1971, AS AMENDED ("FECA")	INTERNAL REVENUE CODE OF 1986, AS AMENDED ("I.R.C.")
REGULATORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
		by a Section 501(c)(3) organization before a legislative body in response to a written request for the purpose of influencing the appointment or confirmation of an individual to a public office). (f) Expenditures incurred for any activity that supports an individual's campaign are an exempt function regardless of whether the particular activity involves express advocacy under federal law. See T.A.M. 9130008 (April 16, 1991) (distributing campaign material promoting a statewide referendum, which contained a candidate's name and picture and identified him as a leader on the issue but did not refer to his candidacy since he had not yet announced his candidacy, was an exempt function). (g) Expenditures of a Section 501(c) organization that are otherwise allowable under FECA or similar state statute are for an exempt function only to the extent provided in Treas. Reg. §1.527-6(b)(3). Treas. Reg. §1.527-6(b)(1)(i). Since regulations under Treas. Reg. §1.527-6(b)(3) have not been issued, these expenditures are not subject to tax under Section 527(f). Examples of these expenditures are those for partisan engagement with the organization's members, and establishing, administering, and fundraising for a PAC. As a matter of sound tax policy, it is unclear why expenditures for member communications and PAC

ACTIVITY	FEDERAL ELECTION CAMPAIGN ACT OF 1971, AS AMENDED ("FECA")	INTERNAL REVENUE CODE OF 1986, AS AMENDED ("I.R.C.")
REGULATORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
		administration are not subject to tax, but expenditures for other political activity are. (h) Similarly, indirect expenses are treated as expenditures for an exempt function only to the extent provided in Treas. Reg. §1.527-6(b)(2). Treas. Reg. §1.527-6(b)(1)(i). Since regulations under Treas. Reg. §1.527-6(b)(2) also have not been issued, expenditures for indirect expenses are not subject to tax under Section 527(f). Indirect expenses are those not directly related to influencing or attempting to influence the election process, but are necessary to support the directly related activities, and activities that must be engaged in to allow a political organization to carry out the activity of influencing or attempting to influence the selection process. Examples of indirect expenses are those for support functions, such as administrative, fundraising, overhead, and recordkeeping. Treas. Reg. §1.527-2(c)(2). In addition, the IRS has ruled that indirect expenses also include (i) acquisition and enhancement of voter lists to target distribution of materials; (ii) candidate research; (iii) polling and focus groups; and (iv) engagement with other organizations that does not involve voter contact. PLR 9808037; 9725036; and 9652026. (i) Expenditures directly related to an exempt function are subject to tax. Treas. Reg. §1.527-6(b)(1)(i). Directly related expenses are those made for activities that are directly related to and support the process of influencing or

ACTIVITY	FEDERAL ELECTION CAMPAIGN ACT OF 1971, AS AMENDED ("FECA")	INTERNAL REVENUE CODE OF 1986, AS AMENDED ("I.R.C.")
REGULATORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
		attempting to influence the election process. Treas. Reg. §1.527-2(c)(1). (j) Expenditures for nonpartisan activities that are not exempt functions are not subject to tax. Treas. Reg. §1.527-6(b)(5). (k) Wealthy donors who contribute to Section 501(c)(4) organizations or who form and control Section 501(c)(4) organizations can use the organization to their tax advantage. When a donor contributes appreciated stock and the organization sells the stock and recognizes gain, the donor does not incur capital gains tax or gift tax. The organization is taxed on the gain only on the lesser of its net investment income and it exempt function expenditures. Accordingly, in a year in which the organization does not make exempt function expenditures, it can sell the stock and not incur any tax under Section 527(f). When a donor does not control the organization, the donor may wish to work with the organization to defer a contribution of appreciated stock to a year in which the organization does not make exempt function expenditures. (l) With the second method, the Section 501(c)(4) organization forms a separate segregated fund, or PAC, which enables the Section 501(c)(4) organization to escape the tax under Section 527(f)(1)-(2). The PAC must be one that the Section 501(c)(4) organization can form under

ACTIVITY	FEDERAL ELECTION CAMPAIGN ACT OF 1971, AS AMENDED ("FECA")	INTERNAL REVENUE CODE OF 1986, AS AMENDED ("I.R.C.")
REGULATORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
		FECA, any similar state statute, or any other state statute that permits the "segregation of dues moneys for exempt functions." I.R.C. §527(f)(3). The PAC, as a separate legal organization, would be subject to the tax. Any contributions that the Section 501(c)(4) organization makes from its own funds to the PAC are exempt functions subject to the tax. See T.A.M. 9433001 (Section 501(c)(6) trade association taxable on contributions it makes to an affiliated PAC). However, the Section 501(c)(4) organization's transfers of political contributions to the PAC are not exempt function expenditures by the transferor organization subject to the tax. The transferor organization must make the transfers promptly and without an intermediary under procedures prescribed by federal or state campaign finance laws after the contributions are initially received by the transferor organization from third-parties. I.R.C. §527(f)(3); Treas. Reg. §1.527-6(e)-(f); S. Rep. No. 93-1357, 93d Cong., 2d Sess. 29 (1974), reprinted in 1974 U.S. Code Cong. & Admin. News 7478, 7519; John Francis Reilly & Barbara A. Braig Allen, "Political Campaign and Lobbying Activities of IRC 501(c)(4), (c)(5), and (c)(6) Organizations," 2003 CPE Text, at L-13 to L-14. (m) The PAC is a separate political organization whose investment income, and any other nonexempt function income, are subject to tax. I.R.C. §527(f)(3). The PAC is

ACTIVITY	FEDERAL ELECTION CAMPAIGN ACT OF 1971, AS AMENDED ("FECA")	INTERNAL REVENUE CODE OF 1986, AS AMENDED ("I.R.C.")
REGULATORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
		not subject to tax on its exempt function income. I.R.C. §527(b)-(c). (n) The PAC's exempt function income means income from the permissible sources of contributions, membership dues, and proceeds from political fundraising events and bingo games. I.R.C. §527(c)(1)(A) and (3)(A)-(D); Treas. Reg. §1.527-3. Income derived from other sources is not treated as exempt function income regardless of whether it is used for exempt function expenditures, or segregated for this use in the future. The income from permissible sources must be segregated and used exclusively for exempt functions. I.R.C. §527(c)(3). A segregated fund means "a fund which is established and maintained by a political organization or an individual separate from the assets of the organization or the personal assets of the individual." Treas. Reg. §1.527-2(b)(1). A fund is not properly segregated if "more than insubstantial amounts" of funds come from impermissible sources. Id. Accordingly, once an incoming dollar meets the exempt function income test because it comes from a permissible source, that dollar must be segregated for use only for the political organization's exempt functions. That dollar must be kept in a separate bank account and spent by the PAC on an exempt function. Otherwise, that dollar is taxed.

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REGULATORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
		EXEMPT FUNCTIONS AND CAMPAIGN INTERVENTION 29. (a) The critical issue in determining whether a Section 501(c)(4) organization is subject to the Section 527(f) tax is the definition of exempt function. This definition is important to Section 501(c)(3) organizations because exempt function under Code Section 527(e)(2) substantially overlaps with campaign intervention under Code Section 501(c)(3). See PLR 199925051 ("A similar analysis [for whether voting records and voter guides violate the Section 501(c)(3) campaign intervention prohibition] may be used to determine the types of voter guides and voting records that would qualify as an exempt function activity under Section 527(e)(2)."); PLR 9808037 ("[T]he fund's voter information material, including voter guides and voting records, would be prohibited political intervention for a section 501(c)(3) organization, and are, correspondingly, for an exempt function within the meaning of section 527(e)(2)."); PLR 9652026 ("[T]he Fund's voter guides and voting records would be prohibited political intervention for a section 501(c)(3) organization, and are, correspondingly, for an exempt function within the meaning of section 527(e)(2)."). (b) Code Section 527(e)(2) defines exempt function as "the function of influencing or attempting to influence the selection, nomination, election, or appointment of any

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REGULATORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
		individual to any Federal, State, or local public office or office in a political organization, or the election of Presidential or Vice-President electors, regardless of whether the individual or electors are selected, nominated, elected, or appointed." 30. The similarities and differences between Section 527(e)(2) exempt function and Section 501(c)(3) campaign intervention are as follows: (a) Efforts to influence executive branch and judicial appointments are not campaign intervention, but are exempt functions. G.C.M. 39,694 (Feb. 1, 1988) (expenditures to oppose a federal judicial nominee); IRS Notice on Attempts to Influence Judicial Appointments by Exempt Organizations (July 21, 2005) ("Unlimited lobbying to influence Senate confirmation of judicial appointments by section 527 organizations is permitted. Under the Code, exempt function activity for political organizations includes expenditures for the purpose of influencing the appointment of an individual to public office. . . . Social welfare organizations under section 501(c)(4), labor, agricultural, or horticultural organizations under section 501(c)(5), and business leagues under Section 501(c)(6) may engage in unlimited lobbying in furtherance of their exempt purposes.") (available at http://www.irs.gov/charities/article/0,,id=141372,00.html).

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REGULATORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
		(b) Appointments made to fill vacancies in elective offices due to death, disability, recall, and resignation are not campaign intervention, but are exempt functions. (c) Impeachment proceedings conducted by the legislature are neither campaign intervention nor an exempt function. The organization must also determine whether efforts to influence the outcome of impeachment proceedings promote the Section 501(c)(3) organization's exempt purpose, or the Section 501(c)(4) organization's social welfare purpose. (d) Popular votes to remove or retain an appointed official, such as a judge, are both campaign intervention and an exempt function. (e) Popular votes to recall an officeholder and to replace a recalled officeholder, regardless of their classification under state law as a ballot measure, are both campaign intervention and an exempt function. (f) Proceedings to determine the outcome of an election, such as recounts and litigation, are probably both campaign intervention and an exempt function. See PLR 199925051 ("Litigation to force or resist a recount, to attack or defend a contestant accused of violating election laws, or to invalidate or uphold a ballot measure linked to the candidate selection process, falls within the meaning of attempting to influence

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REGULATORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
		the election of an individual, and is therefore an exempt function."). (g) Proceedings to select persons to party offices are campaign intervention only if the office is a public office, e.g., a precinct committee person, and are an exempt function regardless of whether the party office is a public office. See Paragraphs 3 and 4 above for a discussion of the definition of public office. 31. The IRS ruled in Rev. Rul. 2004-6, 2004-1 C.B. 328, 330, that when an advocacy communication relating to a public policy issue does not explicitly advocate the election or defeat of a candidate, all the facts and circumstances must be considered in determining whether the expenditure is for an exempt function. Factors that tend to show that the communication is for an exempt function, include, but are not limited to, the following: (a) The communication identifies a candidate for public office; (b) The timing of the communication coincides with an electoral campaign; (c) The communication targets voters in a particular election;

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REGULATORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
		(d) The communication identifies the candidate's position on the public policy issue that is the subject of the communication; (e) The position of the candidate on the public policy issue has been raised as distinguishing the candidate from others in the campaign, either in the communication itself or in other public communications; and (f) The communication is not part of an ongoing series of substantially similar advocacy communications by the organization on the same issue. 32. Factors that tend to show that the communication is not for an exempt function include, but are not limited to, the following: (a) The absence of any one or more of the factors listed in Paragraph 31 above; (b) The communication identifies specific legislation, or a specific event outside the control of the organization, that the organization hopes to influence; (c) The timing of the communication coincides with a specific event outside the control of the organization that the organization hopes to influence, such as a legislative vote or other major legislative action (for example, a hearing before

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REGULATORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
		a legislative committee on the issue that is the subject of the communication); (d) The communication identifies the candidate solely as a government official who is in a position to act on the public policy issue in connection with the specific event (such as a legislator who votes on the legislation); and (e) The communication identifies the candidate solely in the list of key or principal sponsors of the legislation that is the subject of the communication. 2004-1 C.B. 328, 330. 33. In Rev. Rul. 2004-6, 2004-1 C.B. 328, the IRS provided four examples of whether a Section 501(c)(4) organization's advocacy communications relating to a public policy issue come within the definition of an exempt function, one example for a Section 501(c)(5) labor organization, and one example for a Section 501(c)(6) trade association. All the examples assume that the Section 501(c)(4) organization expends funds from its general treasury, and all advocacy communications identify a candidate in an election, target the voters in the election, and solicit contributions. By including the solicitation of contributions in each example, the IRS shows that the presence or absence of solicitations does not make a difference in the result. In light of the substantial overlap between Section 501(c)(3) prohibited campaign intervention and Section 527(e)(2) exempt function, the examples dealing with exempt function provide

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REGULATORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
		guidance by analogy for determining whether issue advocacy by a Section 501(c)(3) organization violates the prohibition against campaign intervention. The first example for a Section 501(c)(4) organization provides: Situation 3. P, an entity recognized as tax-exempt under §501(c)(4), advocates for better health care. Senator D represents State W in the United States Senate. P prepares and finances a full-page newspaper advertisement that is published repeatedly in several large circulation newspapers in State W beginning shortly before an election in which Senator D is a candidate for re-election. The advertisement is not part of an ongoing series of substantially similar advocacy communications by P on the same issue. The advertisement states that a public hospital is needed in a major city in State W but that the public hospital cannot be built without federal assistance. The advertisement further states that Senator D has voted in the past year for two bills that would have provided the federal funding necessary for the hospital. The advertisement then ends with the statement "Let Senator D know you agree about the need for federal funding for hospitals." Federal funding for hospitals has not been raised as an issue distinguishing Senator D from any opponent. At the time the advertisement is published, a bill providing federal funding for hospitals has been introduced in the United States Senate, but no

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REGULATORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
		legislative vote or other major legislative activity on that bill is scheduled in the Senate. Under the facts and circumstances in Situation 3, the advertisement is for an exempt function under §527(e)(2). P's advertisement identifies Senator D, appears shortly before an election in which Senator D is a candidate, and targets voters in that election. Although federal funding of hospitals has not been raised as an issue distinguishing Senator D from any opponent, the advertisement identifies Senator D's position on the hospital funding issue as agreeing with P's position, and is not part of an ongoing series of substantially similar advocacy communications by P on the same issue. Moreover, the advertisement does not identify any specific legislation and is not timed to coincide with a legislative vote or other major legislative action on the hospital funding issue. Based on these facts and circumstances, the amount expended by P on the advertisement is an exempt function expenditure under Section 527(e)(2) and is subject to tax under Section 527(f)(1). 2004-1 C.B. 328, 331. 34. The IRS used a similar example as Situation 3 in Paragraph 33 above in IRS Publication 1828, Tax Guide for Churches and Religious Organizations, Example 1, at 10 (Aug. 2015), but changed the facts to provide that the bill was scheduled for a vote before the election. This fact led the IRS to find

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REGULATORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
		that the church did not violate the prohibition against campaign intervention: Example 1: Church O, a section 501(c)(3) organization, prepares and finances a full page newspaper advertisement that is published in several large circulation newspapers in State V shortly before an election in which Senator C is the incumbent candidate for nomination in a party primary. The advertisement states that a pending bill in the United States Senate would provide additional opportunities for State V residents to participate in faith-based programs by providing funding to such church-affiliated programs. The advertisement ends with the statement "Call or write Senator C to tell him to vote for this bill, despite his opposition in the past." Funding for faith-based programs has not been raised as an issue distinguishing Senator C from any opponent. The bill is scheduled for a vote before the election. The advertisement identifies Senator C's position as contrary to O's position. Church O has not violated the political intervention prohibition. The advertisement does not mention the election or the candidacy of Senator C or distinguish Senator C from any opponent. The timing of the advertising and the identification of Senator C are directly related to a vote on the identified legislation. The candidate identified, Senator C, is an officeholder who is in a position to vote on the legislation.

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REGULATORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
		35. The second example for a Section 501(c)(4) organization is as follows: Situation 4. R, an entity recognized as tax-exempt under §501(c)(4), advocates for improved public education. Governor E is the governor of State X. R prepares and finances a radio advertisement urging an increase in state funding for public education in State X, which requires a legislative appropriation. The radio advertisement is first broadcast on several radio stations in State X beginning shortly before an election in which Governor E is a candidate for re-election. The advertisement is not part of an ongoing series of substantially similar advocacy communications by R on the same issue. The advertisement cites numerous statistics indicating that public education in State X is under-funded. While the advertisement does not say anything about Governor E's position on funding for public education, it ends with "Tell Governor E what you think about our under-funded schools." In public appearances and campaign literature, Governor E's opponent has made funding of public education an issue in the campaign by focusing on Governor E's veto of an income tax increase the previous year to increase funding of public education. At the time the advertisement is broadcast, no legislative vote or other major legislative activity is scheduled in the State X legislature on state funding of public education. Under the facts and

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REGULATORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
		circumstances in Situation 4, the advertisement is for an exempt function under §527(e)(2). R's advertisement identifies Governor E, appears shortly before an election in which Governor E is a candidate, and targets voters in that election. Although the advertisement does not explicitly identify Governor E's position on the funding of public schools issue, that issue has been raised as an issue in the campaign by Governor E's opponent. The advertisement does not identify any specific legislation, is not part of an ongoing series of substantially similar advocacy communications by R on the same issue, and is not timed to coincide with a legislative vote or other major legislative action on that issue. Based on these facts and circumstances, the amount expended by R on the advertisement is an exempt function expenditure under Section 527(e)(2) and is subject to tax under Section 527(f)(1). 2004-1 C.B. 328, 331. The IRS used a similar example in IRS Fact Sheet 2006-17, Example 15 (Feb. 2006), Rev. Rul. 2007-41, Situation 15, 2007-1 C.B. 1421, 1425, and IRS Publication 1828, Tax Guide for Churches and Religious Organizations, Example 2, at 10 (Aug. 2015). The IRS concluded that the organization engaged in campaign intervention. 36. The third example for a Section 501(c)(4) organization is as follows:

ACTIVITY	FEDERAL ELECTION CAMPAIGN ACT OF 1971, AS AMENDED ("FECA")	INTERNAL REVENUE CODE OF 1986, AS AMENDED ("I.R.C.")
REGULATORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
		Situation 5. S, an entity recognized as tax-exempt under §501(c)(4), advocates to abolish the death penalty in State Y. Governor F is the governor of State Y. S regularly prepares and finances television advertisements opposing the death penalty. These advertisements appear on several television stations in State Y shortly before each scheduled execution in State Y. One such advertisement opposing the death penalty appears on State Y television stations shortly before the scheduled execution of G and shortly before an election in which Governor F is a candidate for re-election. The advertisement broadcast shortly before the election provides statistics regarding developed countries that have abolished the death penalty and refers to studies indicating inequities related to the types of persons executed in the United States. Like the advertisements appearing shortly before other scheduled executions in State Y, the advertisement notes that Governor F has supported the death penalty in the past, and ends with the statement, "Call or write Governor F to demand that he stop the upcoming execution of G." Under the facts and circumstances in Situation 5, the advertisement is not for an exempt function under §527(e)(2). S's advertisement identifies Governor F, appears shortly before an election in which Governor F is a candidate, targets voters in that election, and identifies Governor F's position as contrary to S's position. However,

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REGULATORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
		the advertisement is part of an ongoing series of substantially similar advocacy communications by S on the same issue and the advertisement identifies an event outside the control of the organization (the scheduled execution) that the organization hopes to influence. Further, the timing of the advertisement coincides with this specific event that the organization hopes to influence. The candidate identified is a government official who is in a position to take action on the public policy issue in connection with the specific event. Based on these facts and circumstances, the amount expended by S on the advertisements is not an exempt function expenditure under §527(e)(2) and is not subject to tax under Section 527(f)(1). 2004-1 C.B. 328, 332. 37. The fourth example for a Section 501(c)(4) organization is as follows: Situation 6. T, an entity recognized as tax-exempt under §501(c)(4), advocates to abolish the death penalty in State Z. Governor H is the governor of State Z. Beginning shortly before an election in which Governor H is a candidate for re-election, T prepares and finances a television advertisement broadcast on several television stations in State Z. The advertisement is not part of an ongoing series of substantially similar advocacy communications by T on the same issue. The advertisement provides statistics regarding developed countries that have abolished the death penalty, and refers to studies indicating inequities related to the types

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REGULATORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
		of persons executed in the United States. The advertisement calls for the abolishment of the death penalty. The advertisement notes that Governor H has supported the death penalty in the past. The advertisement identifies several individuals previously executed in State Z, stating that Governor H could have saved their lives by stopping their executions. No executions are scheduled in State Z in the near future. The advertisement concludes with the statement "Call or write Governor H to demand a moratorium on the death penalty in State Z." Under the facts and circumstances in Situation 6, the advertisement is for an exempt function under §527(e)(2). T's advertisement identifies Governor H, appears shortly before an election in which Governor H is a candidate, targets the voters in that election, and identifies Governor H's position as contrary to T's position. The advertisement is not part of an ongoing series of substantially similar advocacy communications by T on the same issue. In addition, the advertisement does not identify and is not timed to coincide with a specific event outside the control of the organization that it hopes to influence. Based on these facts and circumstances, the amount expended by T on the advertisement is an exempt function expenditure under Section 527(e)(2) and is subject to tax under Section 527(f)(1). 2004-1 C.B. 328, 332.

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REGULATORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
		38. The example for the Section 501(c)(5) labor organization is as follows: Situation 1. N, a labor organization recognized as tax-exempt under §501(c)(5), advocates for the betterment of conditions of law enforcement personnel. Senator A and Senator B represent State U in the United States Senate. In year 200x, N prepares and finances full-page newspaper advertisements supporting increased spending on law enforcement, which would require a legislative appropriation. These advertisements are published in several large circulation newspapers in State U on a regular basis during year 200x. One of these full-page advertisements is published shortly before an election in which Senator A (but not Senator B) is a candidate for re-election. The advertisement published shortly before the election stresses the importance of increased federal funding of local law enforcement and refers to numerous statistics indicating the high crime rate in State U. The advertisement does not mention Senator A's or Senator B's position on law enforcement issues. The advertisement ends with the statement "Call or write Senator A and Senator B to ask them to support increased federal funding for local law enforcement." Law enforcement has not been raised as an issue distinguishing Senator A from any opponent. At the time this advertisement is published, no legislative vote or other major legislative activity is scheduled in the United

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REGULATORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
		States Senate on increased federal funding for local law enforcement. Under the facts and circumstances in Situation 1, the advertisement is not for an exempt function under §527(e)(2). Although N's advertisement identifies Senator A, appears shortly before an election in which Senator A is a candidate, and targets voters in that election, it is part of an ongoing series of substantially similar advocacy communications by N on the same issue during year 200x. The advertisement identifies both Senator A and Senator B, who is not a candidate for re-election, as the representatives who would vote on this issue. Furthermore, N's advertisement does not identify Senator A's position on the issue, and law enforcement has not been raised as an issue distinguishing Senator A from any opponent. Therefore, there is nothing to indicate that Senator A's candidacy should be supported or opposed based on this issue. Based on these facts and circumstances, the amount expended by N on the advertisement is not an exempt function expenditure under Section 527(e)(2) and is not subject to tax under Section 527(f)(1). 2004-1 C.B. 328, 330-31. 39. The example for the Section 501(c)(6) trade association is as follows: Situation 2. O, a trade association recognized as tax-exempt under §501(c)(6), advocates for increased international

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REGULATORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
		trade. Senator C represents State V in the United States Senate. O prepares and finances a full-page newspaper advertisement that is published in several large circulation newspapers in State V shortly before an election in which Senator C is a candidate for nomination in a party primary. The advertisement states that increased international trade is important to a major industry in State V. The advertisement states that S. 24, a pending bill in the United States Senate, would provide manufacturing subsidies to certain industries to encourage export of their products. The advertisement also states that several manufacturers in State V would benefit from the subsidies, but Senator C has opposed similar measures supporting increased international trade in the past. The advertisement ends with the statement "Call or write Senator C to tell him to vote for S. 24." International trade concerns have not been raised as an issue distinguishing Senator C from any opponent. S. 24 is scheduled for a vote in the United States Senate before the election, soon after the date that the advertisement is published in the newspapers. Under the facts and circumstances in Situation 2, the advertisement is not for an exempt function under §527(e)(2). O's advertisement identifies Senator C, appears shortly before an election in which Senator C is a candidate, and targets voters in that election. Although international trade issues have not been raised as an issue distinguishing Senator C from any opponent, the advertisement identifies

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REGULATORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
		Senator C's position on the issue as contrary to O's position. However, the advertisement specifically identifies the legislation O is supporting and appears immediately before the United States Senate is scheduled to vote on that particular legislation. The candidate identified, Senator C, is a government official who is in a position to take action on the public policy issue in connection with the specific event. Based on these facts and circumstances, the amount expended by O on the advertisement is not an exempt function expenditure under Section 527(e)(2) and is not subject to tax under Section 527(f)(1). 2004-1 C.B. 328, 331. The IRS used a similar example in IRS Fact Sheet 2006-17, Example 14 (Feb. 2006), and Rev. Rul. 2007-41, Situation 14, 2007-1 C.B. 1421, 1424-25, which concludes that the organization has not engaged in campaign intervention. The IRS also pointed out that the advertisement does not mention the election or the candidacy of Senator C. 40. (a) In Freedom Path, Inc. v. IRS, 805 F. Supp. 3d 329 (D.D.C. 2025), the court struck down as unconstitutionally vague under the Due Process Clause of the Fifth Amendment the definition of political activity used by the IRS in determining whether Freedom Path qualified for tax-exemption under Section 501(c)(4). The impermissible vagueness resulted from the absence of a definition of primary activity under Treasury Regulation Section

ACTIVITY	FEDERAL ELECTION CAMPAIGN ACT OF 1971, AS AMENDED ("FECA")	INTERNAL REVENUE CODE OF 1986, AS AMENDED ("I.R.C.")
REGULATORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
		1.501(c)(4)-1(a)(2)(i) and the use of an indeterminate eleven-factor facts and circumstances test in Revenue Ruling 2004-6 for the definition of political activity. (b) Freedom Path was a nonprofit corporation whose stated mission was to "promote and defend the causes that recognize the individual rights and liberties guaranteed to all Americans." It "has advocated against excessive government spending, in favor of a Balanced Budget Amendment," and "against the Patient Protection and Affordable Care Act and various healthcare policies of the federal government." (c) The IRS denied Freedom Path's application for tax-exemption under Section 501(c)(4) and found that 52% of Freedom Path's 2012 expenditures went toward political campaign intervention. The IRS explicitly applied Revenue Ruling 2004-6 and rejected Freedom Path's constitutional objection to it. Freedom Path then sought a declaratory ruling under 26 U.S.C. §7428 that it qualified for a Section 501(c)(4) tax-exemption on the ground that the Revenue Ruling was unconstitutional as applied to it. (d) The court first held that the test for unconstitutional vagueness is the heightened vagueness review that applies to civil regulations of speech, like political speech, protected by the First Amendment. Under this test, regulations authorizing tax exemptions may not be so unclear as to

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REGULATORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
		afford latitude for subjective application by IRS officials. Such latitude enables IRS officials to pass judgment on the content and quality of an applicant's views and goals and therefore to discriminate against those engaged in protected First Amendment activities. Big Mama Rag, Inc. v. United States, 631 F.2d 1030, 1034-35, 1040 (D.C. Cir. 1980). (e) The holding in Big Mama Rag is consistent with the holding of the Supreme Court in Regan v. Taxation With Representation of Washington, 461 U.S. 540, 548-51 (1983). Under Regan, tax-exemption may be denied on criteria neutral with regard to viewpoint. Congress did not have to subsidize lobbying under Section 501(c)(3) because a legislature's decision not to subsidize the exercise of a fundamental right does not infringe on the right as long as that denial is not aimed at the suppression of dangerous ideas. (f) In conducting the vagueness analysis, the court considers the following factors: (a) the degree of explicit guidance that the regulatory provisions and accompanying guidance provide for enforcing the speech regulations; (b) whether that guidance provides subjective or objective considerations; (c) whether the regulations make clear who is covered by its prohibition, what fact(s) trigger that coverage, and what fact(s) trigger liability; (d) the complexity and prolixity of the regulatory

ACTIVITY	FEDERAL ELECTION CAMPAIGN ACT OF 1971, AS AMENDED ("FECA")	INTERNAL REVENUE CODE OF 1986, AS AMENDED ("I.R.C.")
REGULATORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
		provisions and accompanying guidance; (e) whether the standards inquire into difficult-to-determine questions of effect or, in some cases, intent; (f) whether the standards provide a clear criteria or instead an "open-ended rough-and-tumble of factors" for determining the inculpatory fact(s); and (g) any evidence of susceptibility to selective or viewpoint-discriminatory enforcement. [805 F. Supp. 3d at 358-59 (footnotes omitted)] (g) The court framed the Primary Activity inquiry of how to determine an organization's primary activity as follows: Recall that the question at issue for Freedom Path's 501(c)(4) eligibility under the implementing regulation is whether Freedom Path "is operated exclusively for the promotion of social welfare." 26 C.F.R. §1.501(c)(4)-1(a)(1)(ii).. That regulation goes on to say that "[t]he promotion of social welfare does not include direct or indirect participation or intervention in political campaigns on behalf of or in opposition to any candidate for public office." *Id.* §1.501(c)(4)-1(a)(2)(ii). Nonetheless, the IRS has long interpreted the regulation to permit (c)(4)s to engage in some political campaign intervention as long as it is not the organization's "primary" activity, *id.*, based on language in the regulation's preceding subsection instructing that "[a]n organization is operated exclusively for the promotion of social welfare if it is primarily engaged in promoting in some way the common good and general

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REGULATORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
		welfare of the people of the community," as well as other indicia of legislative intent. *Id.* §1.501(c)(4)-1(a)(2)(i); see Rev, Rul. 67-368, 1967-2 C.B. 194; Rev. Rul. 81-95, 1981-1 C.B. 332. The IRS has not promulgated any regulations or guidance on what constitutes an organization's "primary" activity for purposes of this (c)(4) test, but it has at times indicated that it is any activity that exceeds 49% of the organization's overall activity (as measured, typically, by money spent). [805 F. Supp. 3d at 359] (h) The court framed the Political Campaign Activity inquiry as follows: The second inquiry that Freedom Path challenges is the test outlined in Revenue Ruling 2004-6, which the IRS uses to decide, among other things, whether any given expenditure constitutes political campaign intervention for purposes of the Primary Activity inquiry. The Court refers to this second inquiry as the "Political Campaign Activity" inquiry. As a reminder, that IRS guidance document states that the question of whether "an expenditure for an advocacy communication relating to a public policy issue" qualifies as political campaign activity requires consideration of "[a]ll the facts and circumstances" − unless the communication "explicitly advocates the election or defeat of an individual to public office," in which case it is clearly political campaign activity. Rev. Rul. 2004-6, 2004-1 C.B. 328. To guide that facts-and-circumstances inquiry, the Revenue

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REGULATORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
		Ruling includes both (a) a list of 11 factors that "tend to show that an advocacy communication on a public policy issue" qualifies as political campaign activity, which the Revenue Ruling says are non-exhaustive, and (b) a set of six hypothetical "situations" describing a communication and how the IRS would analyze it under that test. *Id.* [805 F. Supp. 3d at 359] (i) The court then found the IRS treatment of the Primary Activity inquiry problematic: One glaring problem is that the text of the challenged regulation does not explicitly impose a "primary" activity test, but is instead read most naturally to prohibit (c)(4)s from engaging in *any* political campaign intervention at all. *See* 26 C.F.R. §1.501(c)(4)—1(a)(1)(ii). And while the IRS has applied a primary activity inquiry to the political activity question through Revenue Rulings, see Rev. Ru. 67-368, 1967-2 C.B. 194; Rev. Rul. 81-95, 1981-1 C.B. 332, it backs away from that interpretation in this very litigation. . . . Here, Freedom Path does not know how much political campaign intervention is too much, and the IRS cannot even agree with itself on the answer. . . . . Freedom Path correctly contends that this lack of guidance "give[s] the IRS" wide "discretion to arbitrarily deny

A GUIDE TO ELECTION YEAR ACTIVITIES OF SECTION 501(C)(3) AND 501(C)(4) ORGANIZATIONS

ACTIVITY	FEDERAL ELECTION CAMPAIGN ACT OF 1971, AS AMENDED ("FECA")	INTERNAL REVENUE CODE OF 1986, AS AMENDED ("I.R.C.")
REGULATORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
		§501(c)(4) status." ECF 33 at 45. And the IRS concedes that the regulation "lack[s] . . . precision" on this point. ECF 35 at 20. Or as the IRS put it in its 2013 NNPRM, "the distinction between campaign intervention and social welfare activity, and the measurement of the organization's social welfare activities relative to its total activities, have created considerable confusion for both the public and the IRS in making appropriate section 501(c)(4) determinations." 2013 NPRM at 71536. [805 F. Supp. 3d at 360-61] (j) The court then found the IRS treatment of the Political Activity inquiry problematic: [Revenue Ruling 2004-6] certainly fails to provide the kind of "explicit guidelines" that would help the agency "avoid arbitrary and discriminatory enforcement." *Big Mama Rag*, 631 F.2d at 1035. And, unfortunately, the rest of the Revenue Ruling does not do much better. Although none of its 11 factors that IRS officials may consider is inherently subjective, the Revenue Ruling offers no guidance as to how officials should weigh the factors against one another or how many it takes to reach the threshold for political campaign intervention. . . . .

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REGULATORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
		One of the individual factors also presents some vagueness concerns by inquiring into the activities of some other, indeterminate set of other speakers besides the applicant organization. *See* Rev. Rul. 2004-6, 2004-1 C.B. 328 (asking whether "[t]he position of the candidates on the public policy issue has been raised as distinguishing the candidate from others in the campaign, either in the communication itself or in other public communications"). But the Supreme Court in *WRTL* cautioned that, when distinguishing between electioneering and issue advocacy, "contextual factors . . . should seldom play a significant rule in the inquiry." *WRTL*, 551 U.S. at 473-74. [805 F. Supp. 3d at 361] (k) Finally, the court found that the vagueness concerns raised by the combination of the Primary Activity inquiry and the Political Activity inquiry are constitutionally insurmountable: An organization seeking to engage in some political campaign intervention while maintaining eligibility for (c)(4) status must determine both (a) whether any given communication will be considered political campaign intervention (the Political Activity inquiry), and (b) whether that expenditure will tip the scales to make its "primary" activity political campaign intervention (the Primary Activity inquiry). If one of those tests is vague, the organization faces only a limited degree of uncertainty. But if both are vague, the uncertainty multiplies. That is

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REGULATORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
		particularly true when, as here, the IRS does not even indicate what threshold it is applying for the Primary Activity inquiry. Worse yet, the IRS's initial determination on Freedom Path's (c)(4) status also relied not only on the 11 non-exclusive factors in Revenue Ruling 2004-6, but also to some (unclear) degree on the seven factors listed in Revenue Ruling 2007-41. *See* ECF 38-4 at 20-22. That regulatory "prolixity" provides another mark of vagueness. *Keyishian*, 385 U.S. 604. Thus, in multiple respects, an applicant like Freedom Path has no good way of knowing even which standard its application will be judged under, no less how the IRS will ultimately judge it. [805 F. Supp. 3d at 362] (l) The court's decision in Freedom Path means that Revenue Ruling 2007-41 dealing with the political campaign activity of Section 501(c)(3) organizations is subject to constitutional attack based on vagueness. See also Jasper L. Cummings, Jr., "Freedom Path or Secret Path?," Tax Notes, at 4 (Dec. 30, 2025) ("The IRS lost in *Freedom Path* because it had tried to make sense of a hopelessly ambiguous statute that even the (mis)users of social welfare organizations would admit created a loophole. Rather than giving the IRS credit for trying to make a terminally ambiguous statute reasonably administrable, the judge turned those efforts against the IRS and sort of assumed that the IRS can't be trusted with ambiguous

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REGULATORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
		sections of the code. Fortunately, it seems that the court's brutal skepticism is limited to tax benefits for which plaintiffs can claim a free speech impact, but that is an increasingly large set of rules. It surely encompasses all of section 501 and more. And the next taxpayer attacking a facts and circumstances standard can claim it violates the due process clause.").
		PROHIBITION AGAINST PRIVATE BENEFIT
		41. (a) A Section 501(c)(3) organization's campaign activities, even when they are educational, nonpartisan, and do not violate the prohibition against campaign intervention, can violate the prohibition against private benefit. Treas. Reg. §1.501(c)(3)-1(d)(1)(ii) ("[I]t is necessary for an organization to establish that it is not organized or operated for the benefit of private interests such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests."); American Campaign Academy v. Commissioner, 92 T.C. 1053 (1989) (Section 501(c)(3) organization impermissibly benefited the Republican party through a training school for career political campaign professionals, a function previously performed by the National Republican Congressional Committee; Section 501(c)(3) organization cannot confer a substantial benefit on particular political interests); PLR 201523021 (organization did not operate exclusively for Section 501(c)(3) exempt

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REGULATORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
		purposes but benefited private interests when it planned a symposium to benefit the candidates of one party; organization extended invitations only to those affiliated with the party, sought to recruit prominent members of the party, networked with those affiliated with the party locally, statewide, and nationally, and scheduled the symposium before a presidential primary). See generally John D. Colombo, "In Search of Private Benefit," 58 Florida Law Review 1063 (2006); Jamison Shipman, "The Challenges of Determining When To Deny Exemption Applications," 178 Tax Notes Federal 955 (Feb. 13, 2023). (b) The requirement under Treas. Reg. §1.501(c)(4)-1(a)(2)(i) that a Section 501(c)(4) organization promote the common good and general welfare of the community means that the prohibition against private benefit applied in American Campaign Academy also applies to Section 501(c)(4) organizations. The prohibition on private benefit is a logical extension of the requirement that a Section 501(c)(4) organization must promote the common good and general welfare of the people of the community. See Treas. Reg. §1.501(c)(4)-2(i); Contracting Plumbers Cooperative Restoration Corp. v. United States, 488 F.2d 684 (2d Cir. 1973), cert. denied, 419 U.S. 827 (1974); Erie Endowment v. United States, 316 F.2d 151 (3d Cir. 1963) (Section 501(c)(4) organization "must be a community movement

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REGULATORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
		designed to accomplish community ends"); PLR 201403020 (organization operated primarily for the benefit of private interests and not to promote social welfare when it spent 90% percent of its time and resources promoting participation in a political party, endorsing candidates of that party, and promoting the active pursuit of a particular voting demographic by that party); PLR 201221029 (organization that primarily served private interests did not operate exclusively for the promotion of social welfare under Section 501(c)(4); under Articles of Incorporation and Bylaws, organization's primary activity was to conduct training programs for women who were members of one political party to run for political office; organization measured its success by the number of graduates who ran for, or won, elective political office representing the party); PLR 201221028 (same); PLR 201221027 (same); PLR 201221026 (same); PLR 201221025 (same); PLR 201214035 (organization did not serve social welfare purposes under Code Section 501(c)(4) when it conducted its activities with the partisan objective of benefiting the interests of M, a presidential candidate in foreign country P; the purpose of advertising in periodicals and the sale of books was to attract citizens of P's attention to the politics in P and to create a high turnout of voters, thus supporting homeland prosperity and advanced politics through M, and to further the development of rights and interests of citizens of P in the United States for the next generation); PLR

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REGULATORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
		201128035 ("[F]or purposes of both section 501(c)(3) and section 501(c)(4), an organization which conducts its educational activities to benefit a political party and its candidates serves private interests;" under Articles of Incorporation and Bylaws, Section 501(c)(4) organization's primary activity is to train and recruit persons affiliated with a certain political party to run for political office; organization measured its success by the number of graduates who have won elective office representing the party, or are actively engaged as campaign managers and advocates for campaigns of candidates affiliated with the party); PLR 201128034 (same); PLR 201128032 (same); PLR 20044008E ("The private benefit standard as described in American Campaign Academy also applies to organizations seeking exemption under 501(c)(4). The difference between these two Code Sections [Section 501(c)(3) and Section 501(c)(4)] lies in the weight accorded the private benefits (i.e. the amount of private benefits), and not the standard. See, e.g., Rev. Rul. 75-286 [1975-2 C.B. 210];" organization conducted political leadership training program with the goal of increasing the number of women involved in public service, including elected office and nonelective governmental positions; organization denied exemption under Code Section 501(c)(4) because it was created for the partisan objective of training and supporting politicians affiliated with a particular faction in the political spectrum).

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REGULATORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
		See also Jonathan D. Salant, "IRS Denial of Tax Exemption To U.S. Political Group Spurs Alarms," Bloomberg.com (June 8, 2012) ("While the nonprofit wasn't named [in PLRs 201221028, 201221027, 201221026, and 201221025], it was Emerge America, its president, Karen Middleton, told Bloomberg News. The national organization is based in San Francisco and works with nine state affiliates that train Democratic women candidates.") (available at www.bloomberg.com/news/2012-06-08/irs-denial-of-tax-exemption-to-u-s-political-group-spurs-alarms.html); Stephanie Strom, "3 Groups Denied Break by I.R.S. Are Named," NYTimes.com (July 20, 2011) ("Three nonprofit advocacy groups that were denied tax exemption by the Internal Revenue Service [in PLRs 201128035, 201128034; 201128032] were all units of Emerge America, an organization devoted to cultivating female political leaders for local, state and federal government. The I.R.S. denied tax exemption to the groups–Emerge Nevada, Emerge Maine and Emerge Massachusetts–because, the agency wrote in denial letters, they were set up specifically to cultivate Democratic candidates. Their Web sites ask for evidence that participants in their training programs are Democrats.") (available at www.nytimes.com/2011/07/21/business/advocacy-groups-denied-tax-exempt-status-are-named.html?_r=1&scp=1&sq=emerge%20nevada&st=cse).

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REGULATORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
		(c) In PLR 201224034, the IRS denied an organization Section 501(c)(4) tax-exempt status because of private benefit. The organization was formed to promote solutions through grassroots advocacy and publicity regarding marine environmental issues, investment in sewer systems, law enforcement raids, school programs, job development, and ambulance response rates. The organization also conducted activities in connection with the founder's election as chair of County state-mandated organization whose mission is to represent the interests of parents and citizens to county's board of education. The founder was the sole director, and the president, secretary, and treasurer. The founder was also the primary funder. The organization's activities were suspended during the founder's election campaign. The founder maintained a blog in which five of seventeen entries criticized the founder's former opponent in a race for elected office, and that contained links to the founder's campaign website. The critical blog posts occurred both before and after the election. The blog also contained information on the political agendas of elected officials. The IRS, citing Contracting Plumbers Cooperative Restoration Corp. v. United States, 488 F.2d 684 (2d Cir. 1973), cert. denied, 419 U.S. 827 (1974) and Erie Endowment v. United States, 316 F.2d 151 (3d Cir. 1963), ruled that the organization's programs solely served to promote the founder. Furthermore, the organization lacked community input or oversight, and any independent members of the community

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REGULATORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
		on its board of directors. Finally, the organization did not establish that its primary activity was not to engage in political intervention. (d) "Private benefit to partisan interests thus appears to be a theoretically viable basis to exclude certain non-campaign §501(c)(4) activities from the purview of social welfare. However, its application presents significant practical difficulties. In all but the most extreme cases, an organization that is not merely the arm of a political party will be able to point to differences with partisan entities sufficient to undermine a partisan benefit challenge. As the recent application for §501(c)(4) status by Empower America shows, while conservative interests may have significant overlap with policies and priorities of the Republican party, that overlap alone is not sufficient to find that promoting a conservative agenda confers impermissible private benefit on partisan Republican interests. Similarly, the Service concluded that the Progress and Freedom Foundation ("PFF"),[33] associated with a course taught by Congressman Newt Gingrich, qualified as a § 501(c)(3) organization even though individuals involved with PFF intended to use themes and ideas developed in the course for partisan purposes.[34] [33] The TAM was unpublished, but its full text was made available by the organization. Tech. Adv. Mem. (Dec. 1,

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REGULATORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
		1998), available in Tax Analysts Doc. No. 1999-5081 or 1999 TNT 24-25. [34] Another §501(c)(3) organization involved in related activities, the Abraham Lincoln Opportunity Foundation ("ALOF"), lost its exemption on the basis of operating for the private benefit of partisan Republican interests. Because ALOF had already been dissolved at the time, it lacked standing to challenge the revocation so the use of the theory in that case was not further tested. Abraham Lincoln Opportunity Found. v. Commissioner, No. 4436-99X (11th Cir. 2001), available in Tax Analysts Doc. No. 2001-17798. Its exemption was restored in early 2003, after a special review of the file conducted by the IRS. I.R.S. Announcement 2003-30, 2003-1 C.B. 929. Notably, however, the IRS original revocation letter asserted that ALOF received substantial funding via loans from GOPAC, a political organization, and that it was active in GOPAC's efforts to train Republican political activists, so that it was operated for the private benefit of GOPAC. These facts, if correct, could distinguish this case from PFF. The public record does not indicate whether the IRS determined that these facts did not in fact indicate that ALOF operated for partisan purposes, or if there was some other basis for the Service's reversal. The PFF TAM distinguished American Campaign Academy on several grounds: the PFF course was not a direct outgrowth of an official party organization's activities; its funding sources were not partisan; there was no

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REGULATORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
		evidence of political bias in admission of students because the course was offered through established colleges; and the material in the course was not explicitly biased towards a party." American Bar Association, Section of Taxation, Exempt Organizations Committee, Subcommittee on Political and Lobbying Organizations and Activities, Final Report of Task Force on Section 501(c)(4) and Politics, May 7, 2004, at 21-22 (available at http://www.abanet.org/tax/pubpolicy/2004/040525exo.pdf). INSUBSTANTIALITY LIMITATION ON LOBBYING BY PUBLIC CHARITIES 42. (a) Code Section 501(c)(3) defines a Section 501(c)(3) organization as one "no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation (except as provided in subsection (h))." See also I.R.C. §170(c)(2)(D) (a charitable contribution eligible for an income tax deduction means a contribution or gift to or for the use of a corporation, trust, or community chest, fund, or foundation "which is not disqualified for tax exemption under section 501(c)(3) by reason of attempting to influence legislation, and which does not participate in, or intervene in (including the publishing or distributing or statements), any political campaign on behalf of (or in opposition to) any candidate for public office").

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REGULATORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
		(b) A public charity that engages in substantial lobbying activity becomes an "action organization" that does not qualify for tax-exemption under Section 501(c)(3). A public charity becomes an action organization when: (i) a substantial part of its activities is attempting to influence legislation by propaganda or otherwise. An organization attempts to influence legislation when it contacts, or urges the public to contact, members of a legislative body for the purpose of proposing, supporting, or opposing legislation, or advocates the adoption or rejection of legislation; or (ii) the organization's primary objective or objectives may be attained only by legislation or the defeat of proposed legislation (e.g., an organization formed specifically to promote a constitutional amendment prohibiting abortion or same-sex marriage), and the organization advocates or campaigns for the attainment of that objective or objectives rather than engaging in nonpartisan analysis or research and making the results available to the public. Treas. Reg. §1.501(c)(3)-1(c)(3)(ii) and (iv); see also Haswell v. United States, 500 F.2d 1133 (Ct. Cl. 1974) (contacting legislators or their staff to persuade the legislators to vote a certain way is lobbying), cert. denied, 419 U.S. 1107 (1975); Rev. Rul. 67-293, 1967-2 C.B. 185 (since lobbying activities were substantial, organization did not qualify for Section 501(c)(3) status; organization operated animal shelters and encouraged others to contact legislators to support legislation to protect animals' well-being).

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REGULATORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
		(c) Under the Code and regulations, the insubstantiality analysis involves two issues: (i) whether the activity is lobbying; and (ii) if yes, whether lobbying is a substantial part of the organization's activities. (d) Legislation means action by Congress, state legislatures, local governing bodies, or by the public in a referendum, initiative, constitutional amendment, or similar procedure. It also includes action by the Senate to ratify a treaty, or confirm a Supreme Court or other federal court nominee, or to confirm a person to a position in an administrative agency. Treas. Reg. §1.501(c)(3)-1(c)(3)(ii); see also IRS Notice 88-76, 1988-27 I.R.B. 34 (attempting to influence the Senate confirmation of a person nominated by the President to be a federal judge is lobbying). (e) Legislation does not include action by the executive branch or administrative agencies with respect to regulatory matters. A public charity or private foundation can engage in unlimited advocacy regarding regulatory action to be taken by an administrative agency. However, when a public charity seeks to influence an administrative agency's position on legislation, it engages in lobbying. (f) Legislation does not include litigation activities within the judicial branch when the organization seeks to fulfill its charitable purposes through bringing litigation as plaintiff.

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REGULATORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
		(g) The lobbying rules apply to attempts to influence foreign legislation. Rev. Rul.73-440, 1973-2 C.B. 177. Determining what constitutes foreign legislation is often difficult since issues that are addressed through legislation in the United States may be addressed in regulatory or executive action in a foreign jurisdiction. For example, a Section 501(c)(3) organization wishing to fund efforts to advocate against an edict of a foreign authoritarian regime without a formal legislative process can likely do so. As another example, a Section 501(c)(3) organization can likely fund efforts to influence a supranational organization, such as the United Nations, World Health Organization, Organization for Economic Cooperation and Development, or International Monetary Fund, as long as the supranational organization does not enact legislation. See Ronald M. Jacobs & Christopher N. Moran, "Private Foundations and Advocacy," 32 Taxation of Exempts 4, 8 (2020). (h) Lobbying can be direct lobbying, or grassroots lobbying. This distinction is especially important for organizations that make an election under Sections 501(h) and 4911. The election limits grassroots lobbying expenditures to 25% of total lobbying expenditures. (i) The United States Supreme Court has upheld the Section 501(c)(3) insubstantiality limitation on lobbying against First Amendment and equal protection challenge. In Regan v. Taxation With Representation of Washington, 461 U.S.

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REGULATORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
		540, 548-51 (1983), the Court held that "tax exemptions and tax deductibility are a form of [federal] subsidy," and "Congress is not required by the First Amendment to subsidize lobbying." 461 U.S. at 544, 546. In an important concurring opinion, Justice Blackmun, joined by Justices Brennan and Marshall, wrote that although the First Amendment does not require the government to subsidize lobbying through a tax deduction, conditioning the deduction on a complete prohibition on lobbying would be unconstitutional since it would deny "a significant benefit to organizations choosing to exercise their constitutional rights." 461 U.S. at 552. This concern was addressed by the ability of a Section 501(c)(3) organization to use an affiliated, yet separate, Section 501(c)(4) organization to engage in lobbying. The requirement of separate organizations ensures that the Section 501(c)(3) organization does not subsidize the Section 501(c)(4) organization; otherwise, public funds would be spent on an activity Congress chose not to subsidize. See also Agency for International Development v. Alliance for Open Society International, 570 U.S. 205 (2013) (denial of a tax deduction for lobbying expenses is a permissible Congressional decision not to subsidize lobbying, and does not impose an unconstitutional burden on protected First Amendment activity; government may choose to subsidize only certain speech, but not other speech, based on viewpoint as long as the conditions define the limits of the

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REGULATORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
		government spending program or specify the activities Congress wants to subsidize, rather than seeking to leverage funding to regulate speech outside the contours of the program itself; Congress can condition certain family-planning funding on an organization not engaging in abortion advocacy as part of its federally funded programming); Legal Services Corp. v. Velazquez, 531 U.S. 533, 542 (2001) (Congress may not impose viewpoint-based restrictions on funding when the government does not itself speak or subsidize transmittal of a message it favors but instead expends funds to encourage a diversity of views from private speakers, such as legal services funding for pro-bono attorneys representing indigent clients); Cammarano v. United States, 358 U.S. 498, 513 (1959) (Treasury regulation that denied a deduction for ordinary and necessary business expenses for the cost of ads for a ballot measure did not violate the First Amendment; "Petitioners are not being denied a tax deduction because they engage in constitutionally protected activities, but are simply being required to pay for those activities entirely out of their own pockets, as everyone else engaging in such activities is required to do;" "[I]t appears to us to express a determination by Congress that since purchased publicity can influence the fate of legislation which will affect, directly or indirectly, all in the community, everyone in the community should stand on the same footing as regards its

ACTIVITY	FEDERAL ELECTION CAMPAIGN ACT OF 1971, AS AMENDED ("FECA")	INTERNAL REVENUE CODE OF 1986, AS AMENDED ("I.R.C.")
REGULATORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
		purchase so far as the Treasury of the United States is concerned"). Camelot Banquet Rooms, Inc. v. United States Small Business Administration, 24 F.4th 640, 646, 647 (7th Cir. 2022) (statute excluded adult entertainment businesses from eligibility for second round of Paycheck Protection Program loans; court applied rational relation review and rejected First Amendment challenge to the exclusion; "Congress is not trying to regulate or suppress plaintiffs' adult entertainment. It has simply chosen not to subsidize it. Such selective, categorical exclusions from a government subsidy do not offend the First Amendment;" "The rational relation test requires a challenger in litigation to exclude any possible rational ground that the legislature might have deemed sufficient for the statutory distinction;" "A government spending program, especially one responding to an economic emergency, is subject to the least rigorous form of judicial review. In enacting such legislation, Congress must respond quickly to an emergency and must hammer together a coalition of majority votes in both houses. The need for compromise and tradeoffs is never greater"); American Society of Association Executives v. United States, 195 F.3d 47 (D.C. Cir. 1999) (under I.R.C. §6033(e), a tax-exempt organization that engages in lobbying and is funded in part by membership dues and other contributions may pay a tax on lobbying activities, or may follow flow-through provisions aimed at making sure no contributor or

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REGULATORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
		dues payer takes a deduction for funds used for lobbying; a Section 501(c)(6) trade association can avoid any burden on First Amendment rights by splitting itself into two Section 501(c)(6) organizations – one that engages exclusively in lobbying on behalf of its members, and one that completely refrains from lobbying; the lobbying wing can be funded by dues and contributions for which members will not be able to take a deduction, and the nonlobbying affiliate can be funded, at least in part, by deductible dues), cert. denied, 529 U.S. 1108 (2000); Christian Echoes National Ministry, Inc. v. United States, 470 F.2d 849 (10th Cir. 1972) (court upheld insubstantiality limitation on lobbying against First Amendment challenge), cert. denied, 414 U.S. 864 (1973); Parks v. Commissioner, 145 T.C. 278, 335-41 (2015) (court upheld excise tax on lobbying expenditures by private foundations under I.R.C. §4945 against First Amendment challenge; government need only show a rational basis for the decision not to extend a subsidy for speech by allowing tax-deductible contributions to support it; since Congress may deny outright the tax exemption and eligibility to receive tax-deductible contributions for a Section 501(c)(3) organization that engages in substantial lobbying, it may also impose on Section 501(c)(3) private foundations the less onerous sanction of excise taxes that are proportionate to the lobbying expenditures and likewise designed to deter the use of any tax subsidy for lobbying; since the taxpayer could readily avoid the excise taxes by establishing a

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		separate Section 501(c)(4) tax-exempt entity to make lobbying expenditures, the excise taxes did not burden lobbying, but instead only operated to limit its subsidization), aff'd, 717 Fed. App'x 712 (9th Cir. 2017) (memorandum disposition not for publication). Cf. Planned Parenthood Federation of America, Inc. v. Kennedy, 162 F.4th 155, 171-74 (1st Cir. 2025) (Section 71113 of the Reconciliation Act of July 4, 2025 prohibited Medicaid payments to an entity that, inter alia, is a Section 501(c)(3) organization that provides abortions; the prohibition also applied to affiliates that did not provide abortions but the statute did not define affiliates; court construed Section 71113 to apply only to affiliate relationships that display traditional hallmarks of direction or oversight: the power to manage, supervise, or govern another entity's operations; court rejected the construction that affiliation depends of shared values, professional standards, or membership in the same umbrella organization; to adopt the latter construction would risk unconstitutionally conditioning federal funds on protected expressive activity). Autor v. Pritzker, 740 F.3d 176 (D.C. Cir. 2014) (lobbyists who challenged presidential executive order making registered lobbyists ineligible to serve on federal Industry Trade Advisory Committees stated a viable First Amendment unconstitutional conditions claim; ban

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REGULATORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
		pressured lobbyists to limit their constitutional right to petition the government); Jeffrey R. Sural, "Personae Non Gratae and Their Constitutional Rights: Banning Lobbyists From Agency Advisory Committees," 27 No. 2 Air & Space Lawyer 4 (2014). President and Fellows of Harvard College v. United States Department of Health and Human Services, 798 F. Supp. 3d 77, 121-24 (D. Mass. 2025) (government funding cuts were linked to Harvard's rejection of the government's efforts to control viewpoints at Harvard and Harvard's filing of its lawsuit to protect its autonomous decision-making and right to manage an academic community and evaluate teaching and scholarship free from government interference; Harvard's actions were protected by the First Amendment and the funding cuts impermissibly imposed unconstitutional conditions on Harvard's receipt of federal funds; although the government announced a funding review consistent with the goals of combatting antisemitism, it did not engage in such a review, weighed the value of any grant, gathered any data regarding antisemitism at Harvard, or considered if and how terminating certain grants would improve the situation for Jewish students at Harvard). See generally Ilya Slomin, "Mitchell Berman on Conditional Federal Grants and the Constitution," The Volokh Conspiracy (May 25, 2025) ("If Trump can use threats over tariffs to pressure nations into opening their markets or

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		strengthening their currencies or ordering more U.S. arms, why can't he do the same with American institutions? Because foreign nations have no constitutional rights, but American universities, lawyers, journalists and states do – rights protected by the First, Fifth, Sixth and Tenth Amendments. Trump's efforts to leverage government benefits against them violate those rights by penalizing their exercise. When [Trump Council of Economic Advisers Chair Stephen] Miran defended high tariffs to gain concessions from trading partners, he noted that 'access to the U.S. market is a privilege that must be earned, not a right.' The same applies to federal funding for education, research and other governmental benefits. They, too, are privileges, not rights. But it's impermissible to withhold benefits for the purpose of shaping or punishing American institutions for exercising the rights they do have – including free speech.") (available at https://reason.com/volokh/2025/05/25/mitchell-berman-on-conditional-federal-grants-and-the-constitution/). (j) The requirements for the separation between the Section 501(c)(3) organization and the Section 501(c)(4) organization are: (i) the organizations must be separately organized under applicable state law; (ii) the organizations must keep separate books and records sufficient to show that tax-deductible contributions to the Section 501(c)(3) organization are not used to pay for lobbying; (iii) the organizations must keep separate bank accounts; (iv) if the

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REGULATORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
		organizations have common directors, officers, or employees, the organizations must track their time and allocate the time worked to the organization for which services were performed; (v) the organizations must reasonably allocate shared property and services; and (vi) the organizations must conduct all business between each other on arm's length terms. Regan v. Taxation With Representation of Washington, 461 U.S. 540, 552-53 (1983) (Blackmun, J., concurring); Moline Properties, Inc. v. Commissioner, 319 U.S. 436 (1943) (each corporation is a separate taxable entity for federal income tax purposes if the corporation is formed for valid business purposes, and is not a sham, an agency, or instrumentality); Ward I. Thomas & Judith Kindell, Affiliations Among Political, Lobbying, and Educational Organizations (2000) (available at www.irs.gov/pub/irs0-tege/eotopics00.pdf). (k) If a Section 501(c)(3) organization is concerned that its lobbying efforts over the long-term will run afoul of the insubstantiality limitation, it should establish a separately incorporated and affiliated Section 501(c)(4) organization to conduct lobbying. A Section 501(c)(4) organization can engage in unlimited lobbying. EXCEPTIONS TO DEFINITION OF LOBBYING UNDER SECTION 4945

A GUIDE TO ELECTION YEAR ACTIVITIES OF SECTION 501(C)(3) AND 501(C)(4) ORGANIZATIONS

ACTIVITY	FEDERAL ELECTION CAMPAIGN ACT OF 1971, AS AMENDED ("FECA")	INTERNAL REVENUE CODE OF 1986, AS AMENDED ("I.R.C.")
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		43. (a) Private foundations are prohibited from engaging in lobbying. I.R.C. §4945(d)(1). The private foundation regulations contain exceptions to the definition of lobbying, and most counsel take the position that the exceptions also apply to public charities. (b) A communication is not a lobbying communication if it is nonpartisan analysis, study, or research, and the results are made available to the general public or a segment or members thereof, or to governmental bodies, officials, or employees. Nonpartisan analysis, study, or research means an independent and objective exposition of a particular subject matter. It may advocate a particular position or viewpoint so long as there is a sufficiently full and fair exposition of the pertinent facts to enable the public or an individual to form an independent opinion or conclusion. A work may fail to come within this exception if it is distributed only to those interested in one side of the issue. Treas. Reg. §53.4945-2(d)(1); Rev. Rul. 64-195, 1964-2 C.B. 138 (organization that studied the law and court systems to assist lawyers in their continuing legal education did not engage in lobbying when it conducted nonpartisan study, research, and assembly of materials regarding court reform and disseminated its findings to the public, and did not advocate approval or disapproval of a proposed constitutional amendment).

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		(c) In a controversial decision, the Tax Court in Parks v. Commissioner, 145 T.C. 278, 321-25 (2015), aff'd, 717 Fed. App'x 712 (9th Cir. 2017) (memorandum disposition not for publication), found that a radio ad dealing with a 2000 Oregon initiative that sought to cap state spending at fifteen percent of individual income was nonpartisan analysis, study, or research. The ad stated: Here are the facts. From 1989 to '91 State government grew by 21 percent, citizen income grew less than 9 percent. In '93 State income up 20 percent, citizens' income just 11 percent. In '95 State incomes up another 23 percent, private pay up less than 11 percent. And in '97 the State income was up 14 percent and private pay just 8 percent. (d) One commentator has criticized the court's holding in Parks as ignoring well-established law on educational lobbying that requires a two-sided exposition of the issues. Jasper L. Cummings, Jr., "Private Foundations and Two-Sided Lobbying," Tax Notes, at 637, 646 (May 2, 2016) ("The opinion chastised the IRS for trying to rely on newspaper articles to prove the true facts. So what is the IRS supposed to do now? Hire public policy experts to explain why a 15 percent cap on state spending is good or not good public policy? Does anyone want the IRS doing that? No. Will the IRS do it? No. So what will be the effects of *Parks*? Less auditing of political activity by

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		private foundations, more private foundation spending on lobbying, and more money in politics."). See also Treas. Reg. §53.4945-2(d)(1)(vii), ex. 1, 2, 3, 4, and 7 (referring or alluding to information on both sides to qualify as nonpartisan analysis, study, or research); Treas. Reg. §53.4945-2(d)(1)(vii), ex. 12 (organization pays for a bumper sticker, billboard, and 30-second TV spot advocating opposition to a specific ballot measure; "In light of the limited scope of the communications, none of the communications is within the exception for nonpartisan analysis, study or research. First, none of the communications rises to the level of analysis, study or research. Second, none of the communications is nonpartisan because none contains a sufficiently full and fair exposition of the pertinent facts to enable the public or an individual to form an independent opinion or conclusion"); Elizabeth J. Kingsley, "Lobbying Regulations Interpreted–After Just 26 Years," Taxation of Exempts 41, 44 (May/June 2016) (if the court's holding in Parks is applied broadly, it would allow "any 30- or 60-second spot that avoids inflammatory rhetoric to qualify as non-lobbying if it simply recites a few arguably supportable facts, even if entirely one-sided"). Cf. Haswell v. United States, 500 F.2d 1133 (Ct. Cl. 1974) (charitable deduction for contributions to a single-issue advocacy organization requires that nonpartisan analysis,

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		study, or research provide a two-sided exposition), cert. denied, 419 U.S. 1107 (1975). (e) Examinations and discussions of broad social, economic, and similar problems are not lobbying even if the problems are of the type with which government would be expected ultimately to deal with. Lobbying communications do not include public discussion, or communications with members of legislative bodies or governmental employees, the general subject of which is also the subject of legislation before a legislative body, so long as the discussion does not address the merits of a specific legislative proposal, and so long as such discussion does not directly encourage recipients to take action with respect to legislation. Treas. Reg. §53.4945-2(d)(4). (f) Lobbying communications do not include the provision of technical advice or assistance to a governmental body, a governmental committee, or a subdivision of either of the foregoing, in response to a written request by the body, committee, or subdivision. The request for assistance or advice must be made in the name of the requesting governmental body, committee, or subdivision, rather than an individual member thereof. Similarly, the response to the request must be available to every member of the requesting body, committee, or subdivision. Because the assistance or advice may be given only upon an express request, the oral or written presentation of the assistance or advice need not

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		qualify as nonpartisan analysis, study, or research. The offering of opinions or recommendations will ordinarily qualify under this exception only if they are specifically requested by the governmental body, committee, or subdivision, or are directly related to the materials so requested. Treas. Reg. §53.4945-2(d)(2); see also Rev. Rul. 70-449, 1970-2 C.B. 112 (university that operated a nationally prominent biology research department did not engage in lobbying when, at the request of a legislative committee, a representative testified as an expert witness on pending legislation affecting the university). (g) Lobbying communications do not include an appearance before, or communication with, any legislative body with respect to a possible decision by that body that might affect the private foundation's existence, its powers and duties, its tax-exempt status, or the deductibility of contributions to it. A foundation may communicate with the entire legislative body, its committees or subcommittees, individual congressmen or legislators, members of their staffs, or executive branch representatives who are involved in the legislative process, if the communication is limited to the prescribed subjects. Similarly, the foundation may make expenditures to initiate legislation if the legislation concerns only matters that might affect the private foundation's existence, its powers and duties, its tax-exempt status, or the

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		deductibility of contributions to it. Treas. Reg. §53.4945-2(d)(3). DETERMINATION OF INSUBSTANTIALITY 44. (a) The insubstantiality limitation on lobbying is a facts and circumstances test. The courts have developed three tests for determining insubstantiality: (i) the time and percentage test; (ii) the expenditure percentage test; and (iii) the balancing of activities test. (b) In Seasongood v. Commissioner, 227 F.2d 907 (6th Cir. 1955), the court adopted the time and effort percentage test. The court held that when an organization devoted less than five percent of its time and effort to lobbying, the lobbying was not substantial in relation to the organization's other activities. The court did not explain how to determine the percentage of time and effort. The organization in Seasongood engaged in activities to promote Cincinnati's sanitation efforts and school systems. See also League of Women Voters v. United States, 180 F. Supp. 379 (Ct. Cl. 1960) (since organization engaged in substantial lobbying activities, it was ineligible for the estate tax exemption for charitable organizations; court looked to the time that the organization spent on lobbying activities to determine whether the activities were substantial; in calculating time spent, court considered the time spent studying, discussing, and formulating a position on the issues, as well as the time

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		spent contacting government officials), cert. denied, 364 U.S. 822 (1960). (c) In Haswell v. Commissioner, 500 F.2d 1133 (Ct. Cl. 1974), cert. denied, 419 U.S. 1107 (1975), the court used the expenditure percentage test to determine whether the National Association of Railroad Passengers' lobbying activities were substantial. The court held that insubstantiality is determined by comparing the amount of the organization's expenditures allocated to lobbying to its total expenditures. When lobbying expenditures ranged from 16.6 to 20.5 percent of the organization's annual budget over two years, and the organization had a primary objective that was political in nature, the organization's lobbying activities were substantial. Finally, the court acknowledged that expenditures were only one measure of insubstantiality. See also PLR 201908024 (organization spent a substantial portion of its revenue on lobbying; percentages are a strong indication that the organization's purposes are not consistent with charity). (d) In Christian Echoes National Ministry, Inc. v. United States, 470 F.2d 849, 855 (10th Cir. 1972), cert. denied, 414 U.S. 864 (1973), the court rejected the use of the percentage and expenditure tests, and adopted the balancing of activities test. The court held, "The political activities of an organization must be balanced in the context of the objectives and circumstances of the organization to

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REGULATORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
		determine whether a substantial part of its activities was to influence or attempt to influence legislation. A percentage test to determine whether the activities were substantial obscures the complexity of balancing the organization's activities in relation to its objectives and circumstances." (citations omitted). The court must not only consider the time and expenditures that an organization devotes to lobbying, but also facility and property use, the amount of information disseminated, and the organization's reputation in the community. The court found it important that the organization published numerous articles and delivered frequent radio broadcasts on over twenty issues that were widely disseminated in an effort to mold public opinion. In addition, the organization called for action with the slogan, "Your opinion isn't worth a nickel without your action to back it up." 470 F.2d at 855. In light of these activities, the court held that the lobbying activities were substantial without regard to a percentage or expenditure test. In addition, the court held that the organization failed the substantiality test even though it did not refer to any specific legislation. See also Kuper v. Commissioner, 332 F.2d 562, 562-63 (3d Cir. 1964) (even though the quantity of an organization's lobbying contacts was insignificant, the time that the organization spent formulating positions and deciding whether to lobby was substantial and must be considered); G.C.M. 36,148 (Jan. 28, 1975) ("[T]he percentage of the

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REGULATORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
		budget dedicated to a given activity is only one type of evidence of substantiality. Others are the amount of volunteer time devoted to the activity, the amount of the publicity the organization assigns to the activity, and the continuous or intermittent nature of the organization's attention to it. All such factors have a bearing on the relative importance of activity, and should be given due consideration in determining whether its conduct is reconcilable with the requirement that it operate exclusively for exempt purposes."); IRS Publication 1828, Tax Guide for Churches and Religious Organizations, at 6 (Aug. 2015) ("Whether a church's or religious organization's attempts to influence legislation constitute a substantial part of its overall activities is determined on the basis of all the pertinent facts and circumstances in each case. The IRS considers a variety of factors, including the time devoted (by both compensated and volunteer workers) and the expenditures devoted by the organization to the activity, when determining whether the lobbying activity is substantial."). (e) A public charity that does not make a Section 501(h) election and that engages in substantial lobbying loses its tax-exemption. In addition to the loss of tax-exemption, the organization must pay an excise tax equal to five percent of the lobbying expenditures. I.R.C. §4912(a). Lobbying expenditures mean "any amount paid or incurred by the organization in carrying on propaganda, or otherwise

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REGULATORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
		attempting to influence legislation." I.R.C. §4912(d)(1). Under this definition, lobbying expenditures include the value of services performed by the organization's employees who engaged in research, preparation, and lobbying activities. (f) The excise tax on the organization does not apply to: (i) an organization that made an election under Sections 501(h) and 4911; (ii) an organization that is ineligible to make an election under Sections 501(h) and 4911; and (iii) a private foundation. I.R.C. §4912(c). (g) When the excise tax is imposed on the organization, a five percent excise tax is also imposed on the agreement of any organization manager to the making of lobbying expenditures, knowing that the expenditures are likely to result in the organization not being described in Section 501(c)(3), unless the agreement is not willful and is due to reasonable cause. The tax is imposed on any manager who agreed to the making of the expenditures. I.R.C. §4912(b). If more than one manager is liable for the excise tax, all the managers are jointly and severally liable for the tax. I.R.C. §4912(d)(3). (h) An organization manager is any officer, director, or trustee of the organization (or anyone with authority similar to these positions), and any employee with authority or

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REGULATORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
		responsibility of the expenditure in question. I.R.C. §§4912(d)(2) and 4955(f)(2). (i) A charitable contribution deduction is disallowed for contributions to a Section 501(c)(3) organization that violates the insubstantiality limitation on lobbying. I.R.C. §170(c)(2)(D) (a charitable contribution eligible for an income tax deduction means a contribution or gift to or for the use of a corporation, trust, or community chest, fund, or foundation "which is not disqualified for tax exemption under section 501(c)(3) by reason of attempting to influence legislation, and which does not participate in, or intervene in (including the publishing or distributing or statements), any political campaign on behalf of (or in opposition to) any candidate for public office"); Treas. Reg. §1.170A-1(j)(5). See Paragraph 14 of the I.R.C. column for "Consequences of Violations" for a discussion of a taxpayer's entitlement to the charitable contribution deduction for contributions made before the date of a public announcement by the IRS of the organization's loss of tax-exemption. SAFE HARBOR ELECTION UNDER SECTIONS 501(h) AND 4911 45. (a) One way to deal with the uncertainty of the facts and circumstances test is for a public charity to elect the safe harbor lobbying rules of Code Sections 501(h) and 4911.

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REGULATORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
		An organization makes the election by filing IRS Form 5768. The election is effective for all taxable years that end after the election is made. I.R.C. §501(h)(6). Once an organization makes the election, it cannot revoke it for a taxable year after that taxable year has begun. The following Section 501(c)(3) organizations cannot make this election: (i) churches and conventions or associations of churches; (ii) an integrated auxiliary of a church or a convention or association of churches; (iii) a member of an affiliated group of organizations under Code Section 4911(f)(2) if one or more members is described in clauses (i) or (ii); (iv) private foundations; and (v) supporting organizations of Section 501(c)(4), (5), or (6) organizations. I.R.C. §501(h)(3)-(5). In addition, these organizations are not subject to the excise tax on substantial lobbying expenditures. I.R.C. §4912(h)(3)-(5). The safe harbor lobbying rules of Code Sections 501(h) and 4911 do not affect the substantiality determination of the lobbying activities of those organizations that cannot or do not make this election. I.R.C. §501(h)(7). See also Judith E. Kindell and John Francis Reilly, "Lobbying Issues," IRS FY 1997 Exempt Organizations Continuing Professional Education Technical Instruction Program Textbook, at 286 (the "1997 CPE Text") ("Churches, along with church-related organizations, were precluded from making an election under IRC 501(h) at their

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		own request. The Joint Committee on Taxation, in its General Explanation of the Tax Reform Act of 1976, 1976-3 C.B. (Vol. 2) 415-416, notes that church groups expressed concern that any restriction on their lobbying activities might violate their rights under the First Amendment. More particularly, the church groups were concerned that including them among the class of organizations eligible to elect might imply Congressional ratification of the decision in Christian Echoes National Ministry, Inc. v. United States, 470 F.2d 849 (10th Cir. 1972), cert. denied, 414 U.S. 864 (1973), which held that the limitations on lobbying were constitutionally valid and that First Amendment rights in the face of such limitations were not absolute. By disqualifying churches and church-related organizations from making the election, Congress sought to remain neutral on the constitutional issue; in fact the Joint Committee on Taxation's Explanation explicitly states: 'So that unwarranted inferences may not be drawn from the enactment of this Act, the Congress states that its actions are not to be regarded in any way as an approval or disapproval of the decision [in Christian Echoes], or of the reasoning in any of the opinions leading to that decision.' Id. at 420."). (b) The total amount of permissible lobbying expenditures is based on a percentage of the public charity's annual exempt purpose expenditures. Exempt purpose expenditures are expenditures that are not subject to the tax on unrelated business taxable income, and include lobbying for exempt

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REGULATORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
		purposes. Exempt purpose expenditures include a reasonable allowance for exhaustion, wear and tear, obsolescence, and amortization of a capital asset. Exempt purpose expenditures do not include: (i) amounts otherwise chargeable to a capital account, such as property acquisition; (ii) amounts paid or incurred for the production of income; and (iii) fundraising expenditures paid to or incurred for a separate fundraising unit of the organization, or a nonemployee or nonaffiliated organization. I.R.C. §4911(c)(1) and (e)(1); Treas. Reg. §56.4911-4. (c) Lobbying expenditures are amounts spent on direct lobbying and grassroots lobbying. See discussion of the definition of direct lobbying in Paragraph 50 below, and the definition of grassroots lobbying in Paragraphs 51 and 52 below. Lobbying activities that do not entail expenditures, such as unreimbursed lobbying activities by bona fide volunteers, are not included in lobbying expenditures. In addition, expenditures for activities that are exceptions to the definition of lobbying are not taken into account. See discussion of the exceptions in Paragraphs 53 and 54 below. (d) When a public charity makes a grant earmarked for lobbying, the public charity makes a lobbying expenditure. Treas. Reg. §§56.4911-4(f)(4) and 53.4945-2(a)(6). A private letter ruling, PLR 200943042, provides guidance for

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REGULATORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
		public charities to determine when grants are not earmarked for lobbying and therefore are not lobbying expenditures. (e) Under PLR 200943042, a public charity may treat general support grants to a public charity as nonlobbying expenditures as long as the grant is not earmarked for lobbying. A public charity's grant restricted for use for a specific project is not, solely because of this restriction, earmarked for lobbying. A public charity may treat a project grant as not earmarked for lobbying if the grant amount, combined with its other grants for that project during the year, do not exceed the nonlobbying portion of the project's budget, and the public charity does not doubt, or have reason to doubt, the budget information provided by the grantee. If a project grant exceeds the nonlobbying portion of the project budget, the public charity must treat as a lobbying expenditure the amount by which the grant exceeds the nonlobbying amount. (f) Expenditures for grassroots lobbying cannot exceed 25% of total lobbying expenditures. (g) The regulations provide rules for determining the costs that constitute lobbying expenditures, Treas. Reg. §56.4911-3(a)(1), the allocation of expenditures for a communication that has both lobbying and bona fide nonlobbying purposes between the two purposes, Treas. Reg. §56.4911-3(a)(2), the allocation of expenditures for a communication that is both a

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REGULATORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
		direct lobbying communication and a grassroots lobbying communication between the two types of lobbying, Treas. Reg. §56.4911-3(a)(3), and determining the amount of exempt purpose expenditures, Treas. Reg. §56.4911-4. (h) Total lobbying expenditures, or the total lobbying nontaxable amount, are as follows: (i) for exempt purpose expenditures of up to $500,000, the total lobbying nontaxable amount is 20% of exempt purpose expenditures, and the grassroots nontaxable amount is 25% of the total lobbying nontaxable amount; (ii) for exempt purpose expenditures of over $500,000 to $1 million, the total lobbying nontaxable amount is $100,000 plus 15% of the excess over $500,000 in exempt purpose expenditures, and the grassroots nontaxable amount is $25,000 plus 3.75% of the excess over $500,000 in exempt purpose expenditures; (iii) for exempt purpose expenditures of over $1 million to $1.5 million, the total lobbying nontaxable amount is $175,000 plus 10% of the excess over $1 million in exempt purpose expenditures, and the grassroots nontaxable amount is $43,750 plus 2.5% of the excess over $1 million in exempt purpose expenditures; (iv) for exempt purpose expenditures of over $1.5 million to $17 million, the total lobbying nontaxable amount is $225,000 plus 5% of the excess over $1.5 million in exempt purpose expenditures, and the grassroots nontaxable amount is $56,250 plus 1.25% of the excess over $1.5 million in exempt purpose expenditures; and (v) for exempt purpose expenditures of

<table>
<tr><th>ACTIVITY</th><th>FEDERAL ELECTION CAMPAIGN ACT OF 1971, AS AMENDED (“FECA”)</th><th>INTERNAL REVENUE CODE OF 1986, AS AMENDED (“I.R.C.”)</th></tr>
<tr><td>REGULATORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING</td><td></td><td></td></tr>
<tr><td></td><td></td><td>over $17 million, the total lobbying nontaxable amount is $1 million, and the grassroots nontaxable amount is $250,000. These rules are set forth in the following chart:
<table>
<tr><th>Exempt Purpose Expenditures</th><th>Total Lobbying Nontaxable Amount</th><th>Grassroots Nontaxable Amount</th></tr>
<tr><td>Less than $500,000</td><td>20%</td><td>5%</td></tr>
<tr><td>$500,000 to $1 million</td><td>$100,000 + 15% of excess over $500,000</td><td>$25,000 + 3.75% of excess over $500,000</td></tr>
<tr><td>$1 to $1.5 million</td><td>$175,000 + 10% of excess over $1 million</td><td>$43,750 + 2.5% of excess of over $1 million</td></tr>
<tr><td>$1.5 to $17 million</td><td>$225,000 + 5% of excess over $1.5 million</td><td>$56,250 + 1.25% of excess of $1 million</td></tr>
<tr><td>Over $17 million</td><td>$1 million</td><td>$250,000</td></tr>
</table>
46. (a) The Code imposes a 25% excise tax on lobbying expenditures that exceed either the total lobbying expenditure limit, or the grassroots lobbying expenditure limit. I.R.C. §4911(a)(1) and (b). If both limits are exceeded, the tax is imposed on the higher excess amount. Treas. Reg. §56.4911-1(b).</td></tr>
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REGULATORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
		(b) If the public charity normally spends more than 150% of its Section 501(h) limit on lobbying, in addition to the excise tax the organization will lose its tax-exempt status. I.R.C. §501(h)(1) and (2)(B). The Code does not define "normally." The regulations use the three preceding years and the current year (the "base years") as the test for the loss of tax-exemption. If during the base years the cumulative lobbying expenditures do not exceed 150% of the cumulative lobbying nontaxable amount, and the cumulative grassroots lobbying expenditures do not exceed 150% of the cumulative grassroots nontaxable amount, the organization will retain its tax-exempt status. Treas. Reg. §1.501(h)-3(b)(1). (c) The regulations provide rules for the treatment of affiliated organizations in determining the amount of lobbying expenditures and the imposition of the excise tax. I.R.C. §4911(f); Treas. Reg. §§56.4911-7(a)(1), 56.4911-8(d), and 56.4911-9(d)(4)(ii); D. Greg Goller, Tamar R. Rosenberg & Margaret A. Bradshaw, "Section 501(h) Elections and the Affiliated Group Rules," Taxation of Exempts 25 (May/June 2010). (d) For a public charity that does not make a Section 501(h) election and that engages in substantial lobbying activities, there is no excise tax that the IRS can impose in lieu of

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		revocation of the charity's Section 501(c)(3) tax-exempt status. 47. One commentator provides the following five-step approach for determining compliance with the safe harbor election under Sections 501(h) and 4911: (a) Step One: Determine the exempt purpose expenditures for the year. (b) Step Two: Calculate the maximum permissible lobbying nontaxable amount. (c) Step Three: Determine which activities are direct lobbying, and which activities are grassroots lobbying. (d) Step Four: Calculate the grassroots lobbying amount. (e) Step Five: Compute the tax on excess lobbying expenditures. Daniel C. Willingham, "'Are You Ready for Some (Political) Football?' How Section 501(c)(3) Organizations Get Their Playing Time During Campaign Seasons," 28 Akron Tax Journal 83, 104-108 (2013). 48. This commentator provides the following example of the five-step approach: Alpha, Beta, and Chi are all Section 501(c)(3) organizations. They have satisfied all requirements and formalities to

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REGULATORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
		maintain their Section 501(c)(3) status, and they are identical in all aspects unless otherwise noted below.

Organization	Status	Step 1	Step 2	Step 3	Step 4	Step 5
Alpha	Pass	$1,200,000	$195,000	GLE: $20,000 CLE: $175,000	$20,000	$0
Beta	Fail	$1,200,000	$195,000	GLE: $30,000 CLE: $175,000	$30,000	.25 x $10,000 = $2,500
Chi	Fail	$1,200,000	$195,000	GLE: $95,000 CLE $100,000	$95,000	.25 x $70,000 = $17,500

Note:
Grassroots lobbying expenditures = GLE
Combined lobbying expenditures = CLE

Alpha followed the statute and therefore incurred no tax. As a result, Alpha's tax-exempt status has been fully protected.

Beta had grassroots lobbying expenditures at less than or equal to combined lobbying expenditures, but had combined lobbying expenditures $10,000 in excess of the allowed amount. As a result, Beta owes $2,500 in tax.

Chi had combined lobbying expenditures equal to the maximum amount, but had grassroots lobbying expenditures that were $70,000 in excess of the allowed amount. As a

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REGULATORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		

result, Chi owes $17,500 in tax. [Daniel C. Willingham, "'Are You Ready for Some (Political) Football?' How Section 501(c)(3) Organizations Get Their Playing Time During Campaign Seasons," 28 Akron Tax Journal 83, 122 (2013)]

49. (a) The election under Sections 501(h) and 4911 has the following advantages. The definitions of direct lobbying and grassroots lobbying, and the limitations on the expenditures for each type of lobbying, provide certainty. The election also benefits small organizations that are less likely to come up against the expenditure limitations. It also benefits organizations that use a substantial number of volunteers. The disadvantage of the election is the $1 million cap. The cap is disadvantageous for large organizations that spend over $1 million annually on lobbying and come within ten percent of expenditures under the insubstantiality test.

(b) The following chart compares the Section 501(h) election and the insubstantiality test:

	Section 501(h) Election	**Insubstantiality Test**
Lobbying Limits	20% of first $500,000 of exempt purpose	Less than a substantial part of activities

A GUIDE TO ELECTION YEAR ACTIVITIES OF SECTION 501(C)(3) AND 501(C)(4) ORGANIZATIONS

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REGULATORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING				
			expenditures, and decreasing percentages after that, up to a $1M cap, 25% of which may be spent on grassroots lobbying	determined by one of three tests, or a combination of these tests
		Volunteer and Other Cost-free Services	Not included in calculating lobbying expenditures	Included in determining whether lobbying is substantial
		Lobbying Definition	Defined, with exclusions for invited testimony; nonpartisan analysis, study, and research; and self-defense	Not defined; no exclusions in statute or regulations; most counsel take the position that guidelines for organizations electing under 501(h) would apply
		Excessive Lobbying Penalty for Organization	25% excise tax on excess over limits in any year	5% excise tax on all lobbying expenses if substantial

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		lobbying results in revocation of tax-exempt status
Excessive Lobbying Penalty for Organization's Officers/Directors	No liability	5% if substantial lobbying willfully or unreasonably authorized
Revocation of Tax-Exempt Status	If lobbying exceeds 150% of limits over four years	If substantial lobbying occurs in any year
Recordkeeping	Must document all direct and grassroots lobbying expenses	Must document all lobbying activities and expenses

DEFINITION OF DIRECT LOBBYING UNDER SECTION 4911

50. (a) Direct lobbying is any attempt to influence legislation through communication with any member or employee of a legislative body, or with any government official or employee who participates in the formulation of the legislation, when the principal purpose of the communication is to influence legislation. A government official includes an official of an administrative agency who has responsibility for legislative matters. I.R.C.

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		§4911(d)(1)(B); Treas. Reg. §56.4911-2(b)(1)(i). A communication with a legislator or government official is treated as direct lobbying only if the communication refers to specific legislation, and reflects a view on such legislation. Treas. Reg. §56.4911-2(b)(1)(ii)-(iii). Therefore, communications with members or employees of legislative bodies to obtain information on the status of legislative proposals without any purpose to influence legislation are not direct lobbying. In addition, a Section 501(c)(3) organization can conduct research to educate legislators on the effect of cutting spending for higher education. (b) Specific legislation means legislation that has already been introduced in a legislative body, or a specific legislative proposal that the organization either supports or opposes. In the case of a referendum, ballot initiative, constitutional amendment, or other measure that is placed on the ballot by petitions signed by a required number or percentage of voters, the voters are considered legislators. An item becomes specific legislation when the petition is first circulated among voters for signature. Treas. Reg. §56.4911-2(d)(1)(ii). (c) In Parks v. Commissioner, 145 T.C. 278, 313-14 (2015), aff'd, 717 Fed. App'x 712 (9th Cir. 2017) (memorandum disposition not for publication), the Tax Court found that under Treas. Reg. §56.4911-2(d)(1)(iii), a radio message

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		was not a direct lobbying communication that referred to and reflected a view on a measure that was the subject of a referendum, ballot initiative, or similar procedure. (i) The radio message presented the following script in narrative format: A few weeks ago, the Parks Foundation revealed that, over the last 10 years, Oregon government income has grown by 130%, nearly 3 times faster than the personal income of citizens who pay for it. The state government didn't like what we said. They filed a lawsuit against us. But, like it or not, the general fund budget has gone from $4 to $10 billion. And where's that money gone? A big part of it goes to the Oregon Health plan that just paid a quarter million dollars for a convicted child molester from Mexico to receive a bone marrow transplant. . . . And 2 brain surgeries for an out-of-state man. . . . Gall bladder surgery for an out-of-state woman. . . .

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		And 2 knee replacements for a skier who lives off a trust fund but said he had no income. The state government is using taxpayers' money to intimidate us from revealing this kind of information. Isn't that what Richard Nixon did when he used the IRS to go after his political enemies? Paid for by the Parks Foundation. (ii) The Tax Court held that while the message, in comparing the rates of growth of state revenues and personal income used terms widely used in an initiative measure seeking to limit state spending, the message was more accurately characterized as direct criticism of the Oregon state government without a suggestion of a remedy. The message's central thrust was not advocacy for the initiative measure, but an attack on the Oregon state government as wasteful and retaliatory with respect to its critics. In addition, unlike a prior radio message, this message did not state that "Oregonians will soon be asked if they want to slow down the growth of their State government." (d) Legislative bodies do not include executive, judicial, and administrative bodies. Treas. Reg. §56.4911-2(d)(3). Administrative bodies are housing authorities, school boards, sewer and water districts, zoning boards, and other

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		similar federal, state, and local special purpose bodies, whether elective or nonelective. Treas. Reg. §56.4911-2(d)(4). Accordingly, a public charity or private foundation can make expenditures to influence the adoption of zoning or environmental regulations, or to influence school board policies. See Ronald M. Jacobs & Christopher N. Moran, "Private Foundations and Advocacy," 32 Taxation of Exempts 4, 5 (2020). (e) The exceptions to direct lobbying are discussed in Paragraph 43 above. DEFINITION OF GRASSROOTS LOBBYING UNDER SECTION 4911 51. (a) Grassroots lobbying is any attempt to influence any legislation through an attempt to affect the opinions of the general public or any segment of the general public. I.R.C. §4911(d)(1)(A); Treas. Reg. §56.4911-2(b)(2)(i). A communication will be treated as grassroots lobbying only if the communication refers to specific legislation, reflects a view on specific legislation, and encourages the recipient to take action with respect to the specific legislation. Treas. Reg. §56.4911-2(b)(2)(ii). This last element is known as a "call to action." (b) A communication is a call to action if it:

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		(i) states that the recipient should contact a legislator or an employee of a legislative body, or should contact any other government official or employee who may participate in the formulation of legislation (but only if the principal purpose of urging contact with the government official or employee is to influence legislation); or (ii) states the address, telephone number, or similar information of a legislator or an employee of a legislative body; or (iii) provides a petition, tear-off postcard or similar material for the recipient to communicate with a legislator or an employee of a legislative body, or with any other government official or employee who may participate in the formulation of legislation (but only if the principal purpose of so facilitating contact with the government official or employee is to influence legislation); or (iv) specifically identifies one or more legislators who will vote on the legislation as: opposing the communication's view with respect to the legislation; being undecided with respect to the legislation; being the recipient's representative in the legislature; or being a member of the legislative committee or subcommittee that will consider the legislation. Encouraging the recipient to take action does not include naming the main sponsor(s) of the legislation for

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		purposes of identifying the legislation. Treas. Reg. §56.4911-2(b)(2)(iii). (c) The first three types of calls to action are direct encouragement, and the fourth type is indirect encouragement. Treas. Reg. §56.4911-2(b)(2)(iii)-(iv). This distinction is important in determining whether the nonpartisan analysis exception to grassroots lobbying applies. (d) A call to action is not necessary for paid advertisements placed in the mass media if the advertisement: (i) appears in the mass media within two weeks before a vote by a legislative body or a committee thereof (but not a subcommittee) on highly publicized legislation; (ii) reflects a view on the general subject of the legislation; and (iii) either refers to the legislation or encourages the public to communicate with legislators about the legislation. Treas. Reg. §56.4911-2(b)(5)(ii). In this situation, the advertisement is presumed to be a grassroots lobbying communication. The organization can rebut this presumption by showing that the advertisement is a type of communication regularly made by the organization in the mass media without regard to the timing of the legislation (that is, a customary course of business exception), or that the timing of the advertisement was unrelated to the upcoming legislative action. Notwithstanding the fact that an organization successfully rebuts this presumption, a mass

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		media communication is a grassroots lobbying communication if the communication would otherwise satisfy the requirements for a grassroots lobbying communication under Treas. Reg. §56.4911-2(b)(2). Id. (e) "Mass media" means television, radio, billboards, and general circulation newspapers and magazines. General circulation newspapers and magazines do not include newspapers and magazines published by an organization for which the expenditure test election under Section 501(h) is in effect, except when the total circulation of the newspaper or magazine is greater than 100,000, and fewer than one-half of the recipients are members of the organization as defined in Treas. Reg. §56.4911-5(f). Treas. Reg. §56.4911-2(b)(5)(iii)(A). (f) When an electing public charity is itself a mass media publisher or broadcaster, all portions of that organization's mass media publications or broadcasts are treated as paid advertisements in the mass media, except those specific portions that are advertisements paid for by another person. Treas. Reg. §56.4911-2(b)(5)(iii)(B). (g) "Highly publicized" means frequent coverage on television and radio, and in general circulation newspapers, during the two weeks preceding the vote by the legislative body or committee. In the case of state or local legislation, "highly publicized" means frequent coverage in the mass

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		media that serve the state or local jurisdiction in question. Even when legislation receives frequent coverage, it is highly publicized only if the pendency of the legislation or the legislation's general terms, purpose, or effect are known to a significant segment of the general public (as opposed to the particular interest groups directly affected) in the area in which the paid mass media advertisement appears. Treas. Reg. §56.4911-2(b)(5)(iii)(C). 52. (a) By not including any call to action in an issue advertisement, and not naming any legislator (other than a bill's sponsor to identify the bill), a public charity can engage in strong issue advocacy without it being grassroots lobbying. See Treas. Reg. §56.4911-2(b)(4)(ii)(A), ex. 3. Two commentators provide the following example of a full-page advertisement published in a newspaper with national circulation that does not come within the definition of grassroots lobbying: Wetlands are valuable ecosystems that are home to many endangered species in our country and contribute to the wider health and well-being of our environment. Adequate preservation of our wetlands is critical to the conservation of many threatened species of animals and to the conservation of much of our nation's water resources. The U.S. Congress is fast becoming one of the major threats to our healthy environment and to the preservation of

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		wetlands. The Wildlife and Wetlands Conservation Act would actually decrease current regulations governing the use of wetlands and provide tax incentives for development of certain wetlands under protection. More than ever, we need to strengthen the protections afforded to our nation's wetlands. Studies show that wetlands preservation is the key to stimulating the restoration of many damaged ecosystems and to ensuring an adequate water supply for future generations. Now is the time to stand up for a healthy environment and ensure that critical protections afforded under the law are not eroded. Working together, concerned citizens can continue to improve the health of our wetlands by ensuring that they are adequately protected. Congress should say "NO" to the Wildlife and Wetlands Conservation Act. WETLANDS: THE KEY TO OUR ENVIRONMENT'S FUTURE Sponsored by Local Conservation Organization, Rural Community Development Corporation Advocates for Healthy Rivers and Save the Wetlands! [Celia Roady & Kimberly Eney, "Advocacy by Section 501(c)(3) Organizations–Federal Tax Law Restrictions on Lobbying," Taxation of Exempts 13, 17-18 (Sept./Oct. 2012)]

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		(b) The wetlands advertisement will be treated as grassroots lobbying if it satisfies the rule for paid advertisements appearing in the mass media within two weeks before a vote of a legislative body or committee thereof (but not a subcommittee) on highly publicized legislation. (c) As another example, a Section 501(c)(3) organization can write an op-ed on the need for funds for AIDS research as long as the op-ed does not support or oppose a ballot measure and does not contain a call to action. EXCEPTION TO GRASSROOTS LOBBYING UNDER SECTION 4911 FOR MEMBERSHIP COMMUNICATIONS 53. (a) Expenditures for a communication that refers to, and reflects a view on, specific legislation are not lobbying expenditures if: (i) the communication is directed only to members of the organization; (ii) the specific legislation that the communication refers to, and reflects a view on, is of direct interest to the organization and its members; (iii) the communication does not directly encourage the member to engage in direct lobbying (whether individually or through the organization); and (iv) the communication does not directly encourage the member to engage in grassroots lobbying (whether individually or through the organization). I.R.C. §4911(d)(2)(D) and (3); Treas. Reg. §56.4911-5(b).

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		(b) Expenditures for a communication that refers to, and reflects a view on, specific legislation, and that satisfies the requirements of clauses (i), (ii), and (iv) of subparagraph (a), but not the requirements of clause (iii) of subparagraph (a), are treated as expenditures for direct lobbying. Treas. Reg. §56.4911-5(c). (c) Expenditures for a communication that refers to, and reflects a view on, specific legislation, and that satisfies the requirements of clauses (i) and (ii) of subparagraph (a), but not the requirements of clause (iv) of subparagraph (a), are treated as expenditures for grassroots lobbying regardless of whether the communication satisfies the requirements of clause (iii) of subparagraph (a). Treas. Reg. §56.4911-5(d). (d) A person is a member of an electing public charity if that person: (i) pays dues or makes a contribution of more than a nominal amount; (ii) makes a contribution of more than a nominal amount of time; or (ii) is one of a limited number of "honorary" or "life" members who have more than a nominal connection with the charity, and who have been chosen for a valid reason (such as length of service to the organization, or involvement in activities forming the basis of the charity's exemption) unrelated to the charity's dissemination of information to its members. Treas. Reg. §56.4911-5(f)(1).

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		(e) A person does not become a member of an electing public charity by becoming a Facebook friend of the organization, or signing up for its e-mail list. (f) Communications directed only to an organization's members that contain a call to action are direct lobbying. Treas. Reg. §56.4911-5(c). (g) Organizations that wish to limit communications to their members should not use a publicly accessible website. Rather, they should use e-mail, text messages, and password protected portions of websites. (h) Communications on Facebook, Twitter, and an organization's publicly accessible website that contain a call to action are likely grassroots lobbying. This treatment applies even if the organization directs the call to action only to its members. Treas. Reg. §56.4911-5(d). <u>OTHER EXCEPTIONS TO LOBBYING UNDER SECTION 4911</u> 54. (a) The regulations under Section 4911 contain exceptions similar to the exceptions to lobbying for private foundations under Section 4945 discussed in Paragraph 43 above. These exceptions are for nonpartisan analysis, study, or research, I.R.C. §4911(d)(2)(A); Treas. Reg. §56.4911-2(c)(1); examinations and discussions of broad social, economic, and similar problems, Treas. Reg. §56.4911-2(c)(2); requests for

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		technical advice, I.R.C. §4911(d)(2)(B); Treas. Reg. §56.4911-2(c)(3); and communications pertaining to an organization's self-defense, I.R.C. §4911(d)(2)(C);Treas. Reg. §56.4911-2(c)(4). The Section 4911 regulations are different from the Section 4945 regulations with respect to the exception for nonpartisan analysis, study, or research. (b) The Section 4911 regulations define nonpartisan analysis, study, or research as an independent and objective exposition of a particular subject matter. It may advocate a particular position or viewpoint so long as there is a sufficiently full and fair exposition of the pertinent facts to enable the public or an individual to form an independent opinion or conclusion. Treas. Reg. §56.4911-2(c)(1)(ii). (c) A communication that reflects a view on specific legislation does not come within the exception for nonpartisan analysis, study, or research if the communication directly encourages the recipient to take action with respect to the legislation. Treas. Reg. §56.4911-2(c)(1)(vi). A communication directly encourages the recipient to take action when it: (i) states that the recipient should contact a legislator or an employee of a legislative body, or should contact any other government official or employee who may participate in the formulation of legislation (but only if the principal purpose

ACTIVITY	FEDERAL ELECTION CAMPAIGN ACT OF 1971, AS AMENDED ("FECA")	INTERNAL REVENUE CODE OF 1986, AS AMENDED ("I.R.C.")
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		of urging contact with the government official or employee is to influence legislation; or (ii) states the address, telephone number, or similar information of a legislator or an employee of a legislative body; or (iii) provides a petition, tear-off postcard or similar material for the recipient to communicate with a legislator or an employee of a legislative body, or with any other government official or employee who may participate in the formulation of legislation (but only if the principal purpose of so facilitating contact with the government official or employee is to influence legislation). Treas. Reg. §56.4911-2(b)(2)(iii)(A)-(C). (d) A communication would encourage the recipient to take action with respect to legislation, but not directly encourage action, if the communication does no more than specifically identify one or more legislators who will vote on the legislation as: (i) opposing the communication's view with respect to the legislation; (ii) being undecided with respect to the legislation; (iii) being the recipient's representative in the legislature; or (iv) being a member of the legislative committee or subcommittee that will consider the legislation. Treas. Reg. §56.4911-2(c)(1)(vi).

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REGULATORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
		(e) Subsequent use of a nonpartisan analysis, study, or research for grassroots lobbying can cause the work to be treated as grassroots lobbying. Treas. Reg. §56.4911-2(c)(1)(v). When advocacy communications or research materials are subsequently accompanied by a direct encouragement for recipients to take action with respect to legislation, the advocacy communications or research materials themselves are treated as grassroots lobbying communications unless the organization's primary purpose in undertaking or preparing the advocacy communications or research materials was not for use in lobbying. In that case, all expenses of preparing and distributing the advocacy communications or research materials are treated as grassroots expenditures. The characterization of expenditures as grassroots lobbying expenditures applies only to expenditures paid less than six months before the first use of the advocacy communications or research materials with a direct encouragement to action. Treas. Reg. §56.4911-2(b)(2)(v)(C)-(D). (f) The primary purpose will not be considered to be for use in lobbying if, before or contemporaneously with the use of the advocacy communications or research materials with the direct encouragement to action, the organization makes a substantial nonlobbying distribution without the direct encouragement to action. Whether a distribution is substantial will be determined by reference to all the facts

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		and circumstances, including the normal distribution pattern of similar nonpartisan analyses, studies, or research by that and similar organizations. Treas. Reg. §56.4911-2(b)(2)(v)(E). (g) For example, an organization prepares a nonlobbying report that is not nonpartisan analysis, study, or research, and distributes it to fifty people. The organization then sends the report to 10,000 people accompanied by a letter that urges the recipients to contact their Senators and Representatives about the legislation discussed in the report. Since the report's nonlobbying distribution is not as extensive as its lobbying distribution, its nonlobbying distribution is not substantial. Accordingly, the organization's primary purpose in preparing the report is determined by reference to all the facts and circumstances. In light of the limited nonlobbying distribution, and the fact that the preparing organization made the lobbying distribution rather than an unrelated organization, both the report and letter are grassroots lobbying. Assuming that the costs of preparing the report were paid within six months of distributing the letter, all the expenditures for preparing and distributing the report and letter are grassroots lobbying expenditures. Treas. Reg. §56.4911-2(b)(2)(v)(H), ex. 1. (h) A public charity or private foundation can contact and seek to persuade executive branch officials regarding regulations and administrative policies as long as the

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		organization's principal purpose is not to influence legislation. I.R.C. §4911(d)(2)(E); Treas. Reg. §56.4911-2(d)(3)-(4). 55. (a) Under either the insubstantiality test or the election under Sections 501(h) and 4911, the lobbying limit is based on the public charity's annual amount of lobbying activity, which varies from year to year. The organization will be unable to precisely determine what its lobbying activity will be in a given year until after the year is over. Planning in advance for lobbying to meet the limit should take into account this uncertainty and reflect a margin of error to avoid exceeding the limit. (b) If the public charity will not use its full lobbying limit in a given year and has sufficient unrestricted funds, it should make a grant before the end of the year to another entity that is not a charity and that can use the grant funds for lobbying in future years, such as a Section 501(c)(4) social welfare organization. The public charity must earmark its grant for a specific charitable project that includes lobbying and that counts against its lobbying limit for the year of the grant. In the absence of the grant, the public charity will lose its ability to use the funds for lobbying. The public charity should not make the grant to another public charity because the recipient's use of the grant funds will count against its

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		lobbying limit, thereby creating a double-counting of the same funds against both charities' lobbying limit. (c) If a Section 501(c)(3) organization is not comfortable that it will comply with either the insubstantiality test or the election under Sections 501(h) and 4911, it should form an affiliated and separate Section 501(c)(4) social welfare organization to conduct its lobbying activities. A Section 501(c)(4) organization can engage in unlimited lobbying in furtherance of its tax-exempt social welfare purposes. (d) The requirements for the separation between the Section 501(c)(3) organization and the Section 501(c)(4) organization are: (i) the organizations must be separately organized under applicable state law; (ii) the organizations must keep separate books and records sufficient to show that tax-deductible contributions to the Section 501(c)(3) organization are not used to pay for lobbying; (iii) the organizations must keep separate bank accounts; (iv) if the organizations have common directors, officers, or employees, the organizations must track their time and allocate the time worked to the organization for which services were performed; (v) the organizations must reasonably allocate shared property and services; and (vi) the organizations must conduct all business between each other on arm's length terms. Regan v. Taxation With Representation of Washington, 461 U.S. 540, 552-53 (1983) (Blackmun, J., concurring); Moline Properties, Inc. v.

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		Commissioner, 319 U.S. 436 (1943) (each corporation is a separate taxable entity for federal income tax purposes if the corporation is formed for valid business purposes, and is not a sham, an agency, or instrumentality); Ward I. Thomas & Judith Kindell, Affiliations Among Political, Lobbying, and Educational Organizations (2000) (available at www.irs.gov/pub/irs0-tege/eotopics00.pdf). PROHIBITION ON LOBBYING BY PRIVATE FOUNDATIONS UNDER SECTION 4945 56. (a) A private foundation cannot make expenditures "to carry on propaganda, or otherwise to attempt to influence legislation." I.R.C. §4945(d)(1). A private foundation cannot pay or incur any amount for any attempt to influence legislation through an attempt to affect the opinion of the general public or any segment thereof, or through communication with any member or employee of a legislative body, or with any other government official or employee who may participate in the formulation of the legislation. (b) The Section 4945 regulations define attempt to influence legislation by incorporating provisions of the regulations interpreting that phrase as used in Code Section 4911(d) for the Code Sections 501(h) and 4911 safe harbor election. Treas. Reg. §53.4945-2(a)(1). See discussion of Code Section 4911(d) in Paragraphs 50 to 52 above.

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		(c) Legislation means action by Congress, any state legislature, any local council, or similar legislative body, or by the public in a referendum, ballot initiative, constitutional amendment, or similar procedure with respect to specific legislative proposals. Treas. Reg. §§53.4945-2(a)(1) and 56.4911-2(d)(1). Legislation does not include action by executive, judicial, or administrative bodies. The prohibition on lobbying applies to contacting administrative agency employees who have legislative responsibilities. See also Parks v. Commissioner, 145 T.C. 278, 306-309 (2015) (a communication to the general public that refers to a ballot measure that has become specific legislation and reflects a view on the measure is an attempt to influence legislation unless it makes available the results of nonpartisan analysis, study, or research; a communication refers to a ballot measure if it either refers to the measure by name, or without naming it, employs terms widely used in connection with the measure or describes the content or effect of the measure), aff'd, 717 Fed. App'x 712 (9th Cir. 2017) (memorandum disposition not for publication). (d) The exceptions to the prohibition on lobbying by private foundations are set forth in Paragraph 43 above. (e) A private foundation may make grants to public charities that lobby in the following situations:

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		(i) A private foundation can make a grant to a public charity that has made an election under Sections 501(h) and 4911 when the public charity will use the grant for membership communications that are not lobbying expenditures under Treas. Reg. §56.4911-5(b). Treas. Reg. §53.4945-2(a)(2). For example, a private foundation can make a grant to a public charity membership organization to prepare a report for its members evaluating and expressing a view on legislation limiting the deductibility of charitable contributions. See Ronald M. Jacobs & Christopher N. Moran, "Private Foundations and Advocacy," 32 Taxation of Exempts 4, 5 (2020). (ii) A private foundation can make a general support grant to a public charity that engages in lobbying when the grant is not earmarked for lobbying. Rather, the decisions on how to use the grant within the public charity's exempt purposes are left entirely to the public charity. A grant is earmarked when it is made under a written or oral agreement that the grant will be used for specific purposes. Accordingly, not being earmarked for lobbying is sufficient to protect the private foundation; a general support grant agreement does not have to expressly prohibit the public charity from using the grant for lobbying. This rule applies without regard to whether the public charity has made an election under Sections 501(h) and 4911. Should the public charity spend the entire grant on lobbying and report to the private

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		foundation that it has done so, the grant will not be a taxable expenditure by the private foundation. Treas. Reg. §53.4945-2(a)(5)-(6)(i). (iii) A private foundation may make a specific project grant to a public charity when the total amount that the foundation gives to the public charity in a taxable year for that project, plus any other grants given by the foundation for the same project for the same year, do not exceed the amount budgeted by the public charity for nonlobbying programs. If the grant is for more than one year, this rule applies to each year of the grant with the amount of the grant measured by the amount actually disbursed by the private foundation in each year, or divided equally between years, at the private foundation's option. This rule applies regardless of whether the public charity made an election under Sections 501(h) and 4911. Treas. Reg. §53.4945-2(a)(6)(ii). For purposes of determining the amount budgeted, a private foundation may rely on budget documents or other sufficient evidence provided by the public charity, such as a signed statement by an authorized officer, director, or trustee, showing the proposed budget of the specific project, unless the private foundation doubts, or in light of all the facts and circumstances reasonably should doubt, the accuracy or reliability of the documents. Treas. Reg. §53.4945-2(a)(6)(iii). If these criteria are satisfied, the grant will not be considered earmarked for lobbying, and the public

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		charity's use of the grant for lobbying will not be attributed to the private foundation. (iv) For example, if a public charity proposes a $200,000 project to educate the public about youth in the foster care system and to lobby for changes to laws governing the state's foster care system, a private foundation may fund up to the amount that the public charity budgets for the nonlobbying portion of the project. If the lobbying portion is budgeted at $40,000, the private foundation can make a grant of up to $160,000 for the project. See Ronald M. Jacobs & Christopher N. Moran, "Private Foundations and Advocacy," 32 Taxation of Exempts 4, 6 (2020). (v) The specific project rules prevent a private foundation from financing the entire budget of a specific project that includes lobbying. As long as none of the grants alone exceed the nonlobbying portion of the budget, multiple private foundations collectively can fully finance a project that includes lobbying. (vi) A private foundation can make a grant to another organization on the condition that the organization obtain a matching support appropriation from a governmental body. Treas. Reg. §53.4945-2(a)(3).

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REGULATORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
		(f) A private foundation does not engage in lobbying by having discussions with officials of governmental bodies as long as: (i) The subject of the discussion is a program that is jointly funded by the foundation and the government, or is a new program that may be jointly funded by the foundation and the government; (ii) The discussions are undertaken for the purpose of exchanging data and information on the subject matter of the program; and (iii) The discussions are not undertaken by foundation managers to make any direct attempt to persuade governmental officials or employees to take particular positions on specific legislative issues other than the program. Treas. Reg. §53.4945-2(a)(3)(i)-(iii). 57. (a) A private foundation that engages in impermissible lobbying, or makes a grant for impermissible lobbying, makes a taxable expenditure subject to excise tax. An initial first-tier excise tax of 20% of the amount of each taxable expenditure is imposed on the foundation. I.R.C. §4945(a)(1). (b) When the first-tier excise tax is imposed on the foundation, an initial first-tier excise tax of 5% of each

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		taxable expenditure is imposed on any foundation manager who agrees to the making of the expenditure knowing that it is a taxable expenditure, unless the agreement is not willful and is due to reasonable cause. The tax is imposed on any manager who agreed to the making of the expenditure. I.R.C. §4945(a)(2). (c) The managers subject to the tax are those who are authorized to approve, or to exercise discretion in recommending the approval of, the making of the expenditure by the foundation, and those managers who are members of a group that is so authorized, such as the board of directors or trustees. Treas. Reg. §53.4945-1(a)(2)(i). The tax does not apply to managers who do not approve the expenditure. Therefore, managers whose participation is ministerial, such certifying the availability of funds for the expenditure or signing a check, should not be subject to the tax. (d) The IRS may abate the first-tier taxes if the foundation establishes that the violation was due to reasonable cause, not to willful neglect, and the foundation corrects the violation. I.R.C. §4962(a). (e) A second-tier excise tax of 100% of the amount of each taxable expenditure is imposed on the foundation if the expenditure is not corrected within the taxable period. I.R.C. §4945(b)(1).

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		(f) When the second-tier excise tax is imposed on the foundation, a second-tier excise tax of 50% of the amount of each taxable expenditure is imposed on any foundation manager who refused to agree to any part of the correction. I.R.C. §4945(b)(2). (g) The taxable period begins with the date of the taxable expenditure, and ends on the earlier of the date when: (i) a deficiency notice for the first-tier tax on the foundation is mailed, and (ii) the first tier tax on the foundation is assessed. I.R.C. §4945(i)(2). (h) The IRS cannot assess the second-tier excise tax unless a foundation manager receives a notice or request to correct the taxable expenditure. Thorne Foundation v. Commissioner, 99 T.C. 67 (1999). (i) The maximum tax that the IRS can impose in the aggregate on all foundation managers for a single taxable expenditure is $10,000 for the first-tier tax, and $20,000 for the second-tier tax. I.R.C. §4945(c)(2). If more than one manager is liable for the same first-tier tax or second-tier tax, their liability is joint and several; the IRS can collect the entire amount or any portion thereof from any one or more of them. I.R.C. §4945(c)(1); Treas. Reg. §53.4945-1(c)(1). (j) The second-tier tax is abated if the taxable expenditure is corrected within the correction period. I.R.C. §4961(a).

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		The correction period begins with the date of the taxable expenditure, and ends ninety days after the mailing of a notice of deficiency for the second-tier tax. This period may be extended by: (i) any period in which assessment of a deficiency is prohibited under Section 6213(a); and (ii) any other period that the IRS determines to be reasonable and necessary to make the correction. I.R.C. §4963(e)(1). (k) Correction means recovering part or all of the expenditure to the extent recovery is possible, and if full recovery is not possible, such additional corrective action as prescribed by regulation. I.R.C. §4945(i)(1). Additional corrective actions are: (i) the foundation withhold any unpaid funds due the grantee; (ii) the foundation not make any further grants to the grantee; (iii) in addition to any generally required reports, the foundation submit periodic (e.g., quarterly) reports of all its expenditures; (iv) improved methods for the foundation to exercise expenditure responsibility; (v) improved methods for the foundation to select recipients of individual grants; and (vi) other actions. Treas. Reg. §53.4945-1(d)(1). (l) If a person becomes liable for the first-tier tax or second-tier tax by reason of any act or failure to act that is not due to reasonable cause, and such person has previously been liable for the tax, or such act or failure to act is both willful and flagrant, then that person is liable for a penalty equal to the

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		amount of the tax. The tax is assessable at any time. I.R.C. §6684. (m) In addition, if there have been either willful repeated acts or failures to act, or a willful and flagrant act or failure to act, that gives rise to liability for the first-tier tax or second-tier tax, and the Secretary notifies the foundation that it is liable for a tax equal to the lesser of aggregate tax benefit resulting from the foundation's Section 501(c)(3) status, and the value of the foundation's net assets, then unless the foundation pays the tax or the IRS abates the tax, the organization's status as a private foundation terminates. I.R.C §507(a)(2) and (c). The IRS can abate the tax if the foundation distributes all its net assets to certain charitable organizations, or a state official notifies the IRS that corrective action has been taken under state law. I.R.C §507(g). (n) In addition to the excise tax, a private foundation can lose its Section 501(c)(3) status if it engages in substantial lobbying under the general lobbying rules.

A GUIDE TO ELECTION YEAR ACTIVITIES OF SECTION 501(C)(3) AND 501(C)(4) ORGANIZATIONS

ACTIVITY	FEDERAL ELECTION CAMPAIGN ACT OF 1971, AS AMENDED ("FECA")	INTERNAL REVENUE CODE OF 1986, AS AMENDED ("I.R.C.")
VOTER REGISTRATION AND GET-OUT-THE-VOTE DRIVES		
	1. (a) A corporation may conduct voter registration and get-out-the-vote drives aimed at its restricted class. Voter registration and get-out-the-vote drives include providing transportation to the place of registration and the polls. Such drives may include communications containing express advocacy, such as urging individuals to register with a particular party or to vote for a particular candidate or candidates. 11 C.F.R. §114.3(c)(4)(i). (b) Disbursements for a voter registration or get-out-the-vote drive conducted under subparagraph (a) are not contributions or expenditures if the drive is nonpartisan. 52 U.S.C. §30118(b)(2)(B). A drive is nonpartisan if it is conducted so that information and other assistance regarding registering or voting, including transportation and other services offered, is not withheld or refused on the basis of support for or opposition to particular candidates or a particular political party. 11 C.F.R. §114.3(c)(4)(ii). (c) A corporation may make disbursements to conduct voter registration and get-out-the-vote drives that are aimed at its restricted class and that do not qualify as nonpartisan, provided that the disbursements are not coordinated expenditures under 11 C.F.R. §109.20, coordinated communications under 11 C.F.R. §109.21, or contributions under 11 C.F.R. Part 100, subpart B. 11 C.F.R. §114.3(c)(4)(iii).	1. Public charities can conduct nonpartisan voter registration and get-out-the-vote drives. The drives should: (a) be limited to urging persons to register to vote or vote, and informing them of the hours and places for registering or voting; (b) mention no candidates or all candidates; (c) not mention any political party other than to identify the party affiliation of the candidates named; and (d) the services offered as part of the drives should be made available without regard to a voter's political preference. 2002 CPE Text, at 379. See also Treas. Reg. §1.527-6(b)(5) ("[T]o be nonpartisan, voter registration and 'get-out-the-vote' campaigns must not be specifically identified by the organization with any candidate or political party."); PLR 201712015 (IRS denied Section 501(c)(3) status to organization when it held events in which predominantly H candidates were invited to speak to the organization's members; the organization's website linked to an event for a current H Senator and H Senatorial candidate, and there were no links to other candidates' websites or events; as part of organization's GOTV effort, it encouraged its members to participate in local G GOTV efforts, be they run by the County H, P, N, Q or any other valid political group its members were comfortable

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	(d) Restricted class means a corporation's executive or administrative personnel and their families, and its stockholders and their families. The restricted class of an incorporated membership organization also includes its individual members and their families. 11 C.F.R. §114.1(c), (h), and (j). 2. (a) A corporation may make communications to the general public regarding voter registration and get-out-the-vote, official registration and voting information, and voting records. These communications can be independent expenditures or electioneering communications. The preparation, contents, and distribution of the communications must not include coordinated expenditures under 11 C.F.R. §109.20, coordinated communications under 11 C.F.R. §109.21, or contributions under 11 C.F.R. Part 100, subpart B. The general public includes anyone who is not in the corporation's restricted class. 11 C.F.R. §114.4(c)(1). (b) Disbursements for voter registration and get-out-the-vote communications are not contributions or expenditures as long as: (i) the communications do not expressly advocate the election or defeat of any clearly identified candidate(s) or candidates of a clearly identified political party; and (ii) the preparation and distribution of the communications are not coordinated with any candidate(s) or political party. 11 C.F.R. §114.4(c)(2).	supporting; organization's meeting minutes discussed ways to vastly increase the percentage of R and H who voted in S; volunteers would try to find twenty people in each precinct to get out the vote and pass out e-mail contacts with the precinct of each member listed; organization cited these as overly optimistic, and that voter turnout of these two populations were historically high); T.A.M. 9117001 (April 26, 1991). 2. (a) The public charity should choose the geographic area for the drive based on nonpartisan criteria, and not with a purpose to influence the outcome of an election. For example, a public charity can choose a geographic area based on the number of the public charity's members who reside in it, but not because the area's Congressional representative is an important supporter of the charity in Congress. A public charity can also review prior voter registration lists to identify unregistered voters, and choose areas that have historically low voter turnout, but should not use prior voter registration lists to target voters who are registered as belonging to a particular party. See PLR 9540044 (voter registration targeting female voters particularly in minority communities); PLR 9223050 (voter registration targeting unhoused persons); PLR 8822056 (voter registration targeting communities whose residents are underregistered in comparison with the voting-age population of the state or region).

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	(c) A corporation may: (i) distribute to the general public, or reprint in whole and distribute to the general public, any registration or voting information, such as instructional materials, that has been produced by the official election administrators; (ii) distribute official registration-by-mail forms to the general public; (iii) distribute absentee ballots to the general public if permitted by applicable state law; and (iv) donate funds to state or local government agencies responsible for the administration of elections to help defray the costs of printing or distributing voter registration or voting information and forms. 11 C.F.R. §114.4(c)(3)(i)-(iii). (d) Disbursements for any of the activities described in subparagraph (c) are not contributions or expenditures as long as: (i) the corporation does not, in connection with any such activity, expressly advocate the election or defeat of any clearly identified candidate(s) or candidates of a clearly identified political party, and does not encourage registration with any particular political party; and (ii) the reproduction and distribution of registration or voting information and forms are not coordinated with any candidate(s) or political party. 11 C.F.R. §114.4(c)(3)(iv). (e) A corporation may prepare and distribute to the general public the voting records of members of Congress. Disbursements for this activity are not contributions or expenditures as long as: (i) the voting records of members	(b) In addition, a public charity should not: (i) choose areas in coordination with a candidate or political party; (ii) choose areas in an effort to defeat candidates whose views are contrary to the public charity's views. T.A.M. 9117001 (April 26, 1991); (iii) choose an area because a candidate in the area is a member of the public charity; (iv) focus exclusively on swing districts; and (v) inform voters of the public charity's positions on the issues most important to it and contemporaneously inform them of which candidates support or oppose its positions. See also PLR 199925051 (voter drive was partisan "due to the intentional and deliberate targeting of individual voters or groups of voters on the basis of their expected preference for pro-issue candidates, as well as the timing of the dissemination and format of the materials used."); T.A.M. 8936002 (Sept. 8, 1989) ("The presentation of a particular viewpoint on controversial matters consistent with the criteria set forth in Rev. Proc. 86-43…may be educational within the meaning of section 501(c)(3) of the Code. Public presentation by an exempt organization of such broad issues as, for example, matters involving defense, economics, or social concerns would not ordinarily be seen as affecting voters' choices in a manner contrary to the prohibition on political activity even if they happen to coincide with or overlap a political campaign.") ("The C project [of get-out-the-vote advertisements] presents a very close call because, while the ads could be viewed as focusing attention on issues of war and peace during the

ACTIVITY	FEDERAL ELECTION CAMPAIGN ACT OF 1971, AS AMENDED ("FECA")	INTERNAL REVENUE CODE OF 1986, AS AMENDED ("I.R.C.")
VOTER REGISTRATION AND GET-OUT-THE-VOTE DRIVES		
	of Congress and all communications distributed with it do not expressly advocate the election or defeat of any clearly identified candidate(s) or candidates of a clearly identified political party; and (ii) the decision on content and the distribution of voting records is not coordinated with any candidate, group of candidates, or political party. 11 C.F.R. §114.4(c)(4). 3. (a) A corporation may support or conduct voter registration and get-out-the-vote drives that are aimed at employees outside its restricted class and the general public. Voter registration and get-out-the-vote drives include providing transportation to the polls or to the place of registration. Voter registration and get-out-the-vote drives must not include coordinated expenditures under 11 C.F.R. §109.20, coordinated communications under 11 C.F.R. §109.21, or contributions under 11 C.F.R. Part 100, subpart B. 11 C.F.R. §114.4(a) and (d)(1). (b) Voter registration and get-out-the-vote drives are not expenditures as long as: (i) the corporation does not make any communication expressly advocating the election or defeat of any clearly identified candidate(s) or candidates of a clearly identified political party as part of the voter registration or get-out-the-vote drive; (ii) the voter registration drive is not directed primarily to individuals previously registered with, or intending to register with, the political party favored by the corporation; (iii) the get-out-the-vote drive is not directed primarily to individuals	1984 election campaign, individuals listening to the ads would generally understand them to support or oppose a candidate in an election campaign. The timing of the release of the ads so close to November vote, even though the reference was changed to 'join the debate,' is also troublesome. Taking into account all facts and circumstances, especially that it is arguable that the ads could be viewed as nonpartisan, we reluctantly conclude A, through its C project, probably did not intervene in a political campaign on behalf of or in opposition to candidate for public office."). See discussion of Rev. Proc. 86-43 in Paragraph 3 of the I.R.C. column for "Voter Guides." 3. A public charity should not: (a) conduct a voter registration drive and give an affiliated Section 501(c)(4) organization, to the exclusion of any other group, its list of new voters; (b) conduct classes in voter registration and get-out-the-vote drives primarily for employees of the affiliated Section 501(c)(4) organization, who then work for only one candidate; (c) lease a mailing list from a PAC, and then target the names on the list for a voter registration or get-out-the-vote drive; or (d) pay the costs of training sessions and issue workshops when advertisements state that the Section 501(c)(4) organization sponsors these activities. 4. A public charity cannot provide voter registration lists or other information that it collects during voter registration drives to candidates, political parties, PACs, or politically

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VOTER REGISTRATION AND GET-OUT-THE-VOTE DRIVES		
	currently registered with the political party favored by the corporation; and (iv) the corporation makes these services available without regard to the voter's political preference. Information and other assistance regarding registering or voting, including transportation and other services offered, must not be withheld or refused on the basis of support for or opposition to particular candidates or a particular political party. 11 C.F.R. §114.4(d)(2). 4. A corporation can make contributions to a Section 501(c)(3) organization whose sole purpose is to conduct voter registration drives. FEC Advisory Opinion 1980-92. 5. A corporation can, together with a Section 501(c)(3) organization, sponsor a series of video tapes featuring Members of Congress who discuss Congress and encourage viewers to vote. FEC Advisory Opinion 1991-17. 6. A corporation can pay for newspaper advertisements that encourage the general public to register and vote. FEC Advisory Opinion 1980-20. 7. A federal candidate and officeholder who also serves as a national party committee officer can contribute personal funds to organizations engaging in voter registration activity as defined in 11 C.F.R. §100.24(a)(2). The contributions to each organization cannot be in amounts that are so large, or in amounts that constitute such a substantial percentage of the organization's receipts, that	active Section 501(c)(4) organizations because the Section 501(c)(3) organization would use its assets for political purposes. The Section 501(c)(3) organization must sell or lease the list and information for fair market value. 5. In Fact Sheet 2006-17 (Feb. 2006), the IRS provided the following examples of permissible and impermissible voter registration and get-out-the-vote drives: Example 1: B, a section 501(c)(3) organization that promotes community involvement, sets up a booth at the state fair where citizens can register to vote. The signs and banners in and around the booth give only the name of the organization, the date of the next upcoming statewide election, and notice of the opportunity to register. No reference to any candidate or political party is made by the volunteers staffing the booth or in the materials available at the booth, other than the official voter registration forms which allow registrants to select a party affiliation. B is not engaged in political campaign intervention when it operates this voter registration booth. The IRS also used this example in Rev. Rul. 2007-41, Situation 1, 2007-1 C.B. 1421, 1422, and IRS Publication 1828, Tax Guide for Churches and Religious Organizations, Example 3, at 15 (Aug. 2015). Example 2: C is a section 501(c)(3) organization that educates the public on environmental issues. Candidate G is running for the state legislature and an important element

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VOTER REGISTRATION AND GET-OUT-THE-VOTE DRIVES		
	the organization would be considered financed by the officeholder. FEC Advisory Opinion 2004-25.	of her platform is challenging the environmental policies of the incumbent. Shortly before the election, C sets up a telephone bank to call registered voters in the district in which Candidate G is seeking election. In the phone conversations, C's representative tells the voter about the importance of environmental issues and asks questions about the voter's views on these issues. If the voter appears to agree with the incumbent's position, C's representative thanks the voter and ends the call. If the voter appears to agree with Candidate G's position, C's representative reminds the voter about the upcoming election, stresses the importance of voting in the election and offers to provide transportation to the polls. C is engaged in political campaign intervention when it conducts this get-out-the-vote drive. The IRS also used this example in Rev. Rul. 2007-41, Situation 2, 2007-1 C.B. 1421, 1422. 6. In Publication 1828, Tax Guide for Churches and Religious Organizations, Example 4, at 15-16 (Aug. 2015), the IRS provides the following example of an impermissible get-out-the-vote drive: Example 4: Church C is a Section 501(c)(3) organization. C's activities include educating its members on family issues involving moral values. Candidate G is running for state legislature and an important element of her platform is challenging the incumbent's position on family issues. Shortly before the election, C sets up a telephone bank to call registered voters in the district in which Candidate G is

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VOTER REGISTRATION AND GET-OUT-THE-VOTE DRIVES		
		seeking election. In the phone conversations, C's representative tells the voter about the moral importance of family issues and asks questions about the voter's views on these issues. If the voter appears to agree with the incumbent's position, C's representative thanks the voter and ends the call. If the voter appears to agree with Candidate G's position, C's representative reminds the voter about the upcoming election, stresses the importance of voting in the election and offers to provide transportation to the polls. C is engaged in political campaign intervention when it conducts this get-out-the-vote drive. 7. Under Code Section 4945, private foundations can conduct nonpartisan voter registration drives that satisfy the following requirements, and can make grants to another private foundation or a public charity for nonpartisan voter registration drives that satisfy the following requirements: (a) the grant supports only nonpartisan activities. This requirement likely refers to nonpartisan voter registration activities. In addition, counsel can reasonably take the position that nonpartisan under Code Section 4945 has the same meaning as nonpartisan activities under Code Section 501(c)(3). Accordingly, grants for voter registration drives that target disenfranchised groups are permissible as long as the geographic region sufficiently large; (b) the grant is used for more than one election period;

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VOTER REGISTRATION AND GET-OUT-THE-VOTE DRIVES		
		(c) the activity supported by the grant is conducted in at least five states. Counsel can reasonably take the position that the requirements of subparagraphs (b) and (c) are met when the grant covers voter registration drives in more than one (two year federal) election cycle, and in at least five states per election cycle; (d) the organization spends at least 85% of its income directly for the active conduct (as defined in I.R.C. §4942(j)(3)) of the purposes for which it is organized. Counsel can reasonably take the position that "income" means investment income, fee for service revenue, and grants for which specific deliverables are required, and does not include unrestricted gifts. Reasonable administrative and operating expenses associated with program activities are expenditures for the active conduct of the organization's exempt purposes. Fundraising expenses are likely treated as an offset against gross income of which 85% must be spent for the active conduct of exempt purposes. Treas. Reg. §53.4942(b)-1(b)(1); PLR 9751029; (e) the organization receives at least 85% of its support (other than Section 509(e) gross investment income) from exempt organizations, the general public, governmental units, or any combination of the foregoing; no more than 25% of this support comes from one exempt organization; and not more than half of the organization's support comes

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VOTER REGISTRATION AND GET-OUT-THE-VOTE DRIVES		
		from gross investment income. In determining whether the organization meets this requirement for any taxable year, the support it receives in that taxable year and the preceding four taxable years is considered. Counsel can reasonably take the position that in determining the contributions and time period to which this requirement applies, any contributions held by the organization in the year in which it seeks to satisfy Section 4945 must not be subject to disqualifying conditions; and (f) contributions to the organization for voter registration drives are not subject to conditions that they must be used in specified states, possessions of the United States, or political subdivisions or other areas of any of the foregoing, or in the District of Columbia, or that they must be used in a specified election period. Counsel can reasonably take the position that a condition is a legally enforceable limitation. Therefore, if the grantor requests that the grantee consider certain geographic regions, there is not an enforceable condition that runs afoul of this requirement. I.R.C. §4945(d)(2) and (f); H. Rep. No. 91-413 (Part 1), 91st Cong., 1st Sess. 33-34 (1969), 1969-3 C.B. 200, 222; Treas. Reg. §53.4945-3(b); PLR 9751029, 9629025, 9540044, 9223050, and 8822056. See generally Elizabeth J. Kingsley, "Private Foundations Can Help Put a Voter Registration Drive on the Road,"

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VOTER REGISTRATION AND GET-OUT-THE-VOTE DRIVES		
		Taxation of Exempts 39-48 (March/April 2015) (the "Kingsley Article"). 8. (a) Since the rules discussed in Paragraph 7 above apply when a private foundation makes a grant for a voter drive, the definition of grant is important. The definition turns on the definition of taxable expenditure. Treas. Reg. §53.4945-2(a)(5). (b) A grant by a private foundation to a public charity is not a taxable expenditure if the private foundation does not agree orally or in writing that the grant will be earmarked for a specific purpose, i.e., a voter registration drive, and there also is no oral or written agreement by which the private foundation may cause the grantee to engage in the earmarked purpose. Under this definition, a private foundation's general support grant to a public charity that conducts a range of activities would not be earmarked for a specific purpose, and would not be a taxable expenditure. Furthermore, the grant agreement would not have to contain a prohibition on the use of the grant for voter registration. (c) Counsel can reasonably take the position that a grant is not a taxable expenditure when it contains a voter registration component, and the amount of the grant does not exceed the non-voter registration portion of the grant. Kingsley Article, at 41.

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VOTER REGISTRATION AND GET-OUT-THE-VOTE DRIVES		
		(d) When a grant or grant proposal states that it may be used for voter registration drives, and the grantee retains the discretion to make the final decision without further approval from the private foundation, an earmarking and taxable expenditure should not occur. Id. 9. A private foundation does not have to exercise expenditure responsibility for the grants described in Paragraph 7 above. Treas. Reg. §§53.4945-3(b)(2) and 53.4945-5(a)(1). 10. Private foundations that engage in impermissible voter registration drives or make grants for impermissible voter registration drives are subject to the excise tax regime described in Paragraph 57 of the I.R.C. column for "Regulatory Provisions on Contributions, Expenditures, and Electioneering." 11. If a private foundation makes a grant to another private foundation or a Section 501(c)(4) organization, the private foundation must comply with the expenditure responsibility rules of Code Section 4945(h). These rules require the private foundation to enter into a written grant agreement that includes an express prohibition on using grant funds to attempt to influence legislation or carry on a voter registration drive. Treas. Reg. §53.4945-5(b)(3)(iv)(a). 12. Other than voter registration drives, private foundations can engage in nonpartisan election-related activities, such as get-out-the-vote drives, voter education projects, and

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VOTER REGISTRATION AND GET-OUT-THE-VOTE DRIVES		
		candidate forums, free of the limitations of Code Section 4945(d)(2) and (f). IRS Information Letter 2004-0169 (Dec. 9, 2004). 13. A community foundation that is not a private foundation can conduct voter registration drives free of the limitations of Code Section 4945(f). A community foundation can engage in nonpartisan election-related activities, such as voter registration drives, get-out-the-vote drives, voter education projects, and candidate forums, as long as they do not constitute prohibited campaign intervention under Section 501(c)(3). IRS Information Letter 2004-0169 (Dec. 9, 2004). 14. The Section 527(f) tax on exempt function expenditures, to which Section 501(c)(4) organizations are subject, does not apply to nonpartisan voter registration and get-out-the-vote drives. Treas. Reg. §1.527-6(b)(5). Nonpartisan means the drive is not specifically identified by the organization with any candidate or political party. Id.; see also PLR 199925051 (voter registration and get-out-the-vote drives are partisan when used "to increase the election prospects of pro-issue candidates as a group").

A GUIDE TO ELECTION YEAR ACTIVITIES OF SECTION 501(C)(3) AND 501(C)(4) ORGANIZATIONS

ACTIVITY	FEDERAL ELECTION CAMPAIGN ACT OF 1971, AS AMENDED ("FECA")	INTERNAL REVENUE CODE OF 1986, AS AMENDED ("I.R.C.")
VOTER GUIDES		
	1. (a) A corporation may prepare and distribute to the general public voter guides, including voter guides obtained from a Section 501(c)(3) or 501(c)(4) organization. The preparation, contents, and distribution of the communications must not include coordinated expenditures under 11 C.F.R. §109.20, coordinated communications under 11 C.F.R. §109.21, or contributions under 11 C.F.R. Part 100, subpart B. The general public includes anyone who is not in the corporation's restricted class. 11 C.F.R. §114.4(c)(1) and (5)(i). (b) Disbursements for the voter guides are not contributions or expenditures as long as the voter guides satisfy the requirements of Paragraph 2 or Paragraph 3 below. 11 C.F.R. §114.4(c)(5)(ii). 2. The disbursements are not contributions or expenditures as long as the corporation does not act in cooperation, consultation, or concert with or at the request or suggestion of the candidates, the candidates' committees, or their agents regarding the preparation, contents, and distribution of the voter guide, and no portion of the voter guide expressly advocates the election or defeat of one or more clearly identified candidate(s) or candidates of any clearly identified political party. 11 C.F.R. §114.4(c)(5)(ii)(A). 3. (a) The disbursements are not contributions or expenditures as long as the corporation does not act in cooperation, consultation, or concert with or at the request or suggestion	1. A Section 501(c)(3) organization can distribute voter guides, responses to candidate questionnaires, and incumbent voting records (often known as legislative score cards or report cards) if they: (a) do not contain editorial comment; (b) cover a broad range of issues, rather than limited to the issues most important to the organization. The latter practice invites readers to compare the organization's positions with the candidates' positions; (c) for incumbent voting records, cover all legislators representing the organization's region, and not identify which incumbents are candidates for re-election; (d) for incumbent voting records, are not deliberately distributed to coincide with an election, and are distributed during a campaign in the same manner as during the year; (e) for voter guides and responses to candidate questionnaires, cover all candidates for a public office or at least all viable candidates; and (f) contain a disclaimer stating that the organization is nonpartisan and does not endorse any party or candidate. Rev. Rul. 78-248, 1978-1 C.B. 154; PLR 200836033 (prohibited campaign intervention occurred when organization distributed voter guides in which the

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VOTER GUIDES		
	of the candidates, the candidates' committees, or their agents regarding the preparation, contents, and distribution of the voter guide. In addition, the corporation must satisfy the requirements of subparagraphs (b) to (e). (b) The corporation must provide all the candidates for a particular seat or office an equal opportunity to respond, except that in the case of Presidential and Vice Presidential candidates the corporation may choose to direct the questions only to those candidates who: (i) are seeking the nomination of a particular political party in a contested primary election; or (ii) appear on the general election ballot in the state(s) where the voter guide is distributed, or appear on the general election ballot in enough states to win a majority of the electoral votes. (c) No candidate receives greater prominence in the voter guide than other participating candidates, or substantially more space for responses. (d) The voter guide and its accompanying materials do not contain an electioneering message. (e) The voter guide and its accompanying materials do not score or rate candidates' responses in such a way as to convey an electioneering message. 11 C.F.R. §114.4(c)(5)(ii)(B).	Democratic candidates regularly had "No Response" listed after all or part of the issues, and very few Republican candidates were listed without a complete list of "Opposes" or "Supports" underneath their names and pictures; the lack of responses from Democratic candidates and the wording and choice of issues to create a particular response along party lines was significant; the summary descriptions of the issues, such as, "Establishment of a State Income Tax," "Abortion on Demand," and "Parental Choice in Education (Vouchers)," were so vague that they did not adequately cover any of the issues and created the possible distortion of the candidate's position when translating a vote on legislation to a summary description; the voter guides listed the names of a neutral group of candidates, but fully reported the positions of only some of the Democratic candidates and almost all of the positions of the Republican candidates; and the organization distributed the voter guides to previously identified conservative churches and conservative individuals); PLR 199925051 (a critical factor in determining whether a voter guide is nonpartisan "is whether the guide evidences a bias or preference with respect to the views of any candidate or group of candidates."); PLR 9808037; PLR 9635003. 2. If a candidate questionnaire contains twenty questions, and the organization publishes the answers to ten of the questions but selects which ten answers to publish based

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VOTER GUIDES		
		on the electoral district in which it distributes the answers, the IRS will likely find prohibited campaign intervention. 3. If voter guides, responses to candidate questionnaires, and incumbent voting records cover a narrow range of issues, especially the ones of most importance to the organization, they should: (a) be distributed only to the organization's members, rather than the general public or any particular congressional district. If the organization posts the document on its website, access should be limited to a members only area. Cf. FEC Advisory Opinion 2006-3 (corporation can create password-restricted website for PAC that is accessible by current employees in solicitable class using one common user name and password; PAC may provide access to its website from corporation's government relations website); FEC Advisory Opinion 2000-10 (trade association created members only, password protected portion of website for its PAC that contained a solicitation authorization form for members to download and print; arrangement was not a PAC solicitation subject to the disclaimer required by 52 U.S.C. §30120 (formerly 2 U.S.C. §441d)); FEC Advisory Opinion 1997-16 (membership organization prohibited from making a list of candidate endorsements available on its websites unless it limited access to the list to only its members);

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VOTER GUIDES		
		(b) for incumbent voting records, have an initial distribution shortly after the close of a legislative session, which shows an educational purpose, rather than a purpose to influence the outcome of an election; (c) for incumbent voting records, not be deliberately distributed to coincide with an election, and be distributed during a campaign in the same manner as during the year; (d) for incumbent voting records, not identify which incumbents are candidates for re-election, not compare incumbents, and not comment on a person's qualifications for public office; (e) cover all legislators representing the organization's region, and not focus on a legislators from a geographic area in which elections are held; (f) no comment is made on an individual's qualifications for public office; (g) contain a statement that the reader should not judge an incumbent based only on selected votes, and recommend that the reader consider other factors, such as performance on legislative committees and constituent service; and (h) contain a disclaimer stating that the organization is nonpartisan and does not endorse any party or candidate. Rev. Proc. 86-43, 1986-2 C.B. 729; Rev. Rul. 80-282, 1980-2 C.B. 178; PLR 200836033 (prohibited campaign

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VOTER GUIDES		
		intervention occurred when organization distributed legislative score cards to a large number of religious conservatives; the names of Republicans were shown in all capital letters with the highest percentage scores in the score card; the legislator's score was based upon his or her agreement or disagreement with the organization's issues; and the score cards were published and distributed to coincide with the national and state elections); IRS Nondocketed Service Advice Review 20044040E (April 16, 2004) ("While applicant's literature contained no express statements in support of or in opposition to any specific candidate, it was widely distributed to the public during an election campaign and its emphasis on one area of concern indicates that its purpose is not nonpartisan education. Voters were encouraged to vote for or against candidates based on a candidate's position with respect to the **** issue."). Compare G.C.M. 38,444 (July 15, 1980) (a church could distribute incumbent voting records with a "+" or "-" showing whether the vote was consistent with the church's position; "[I]n the absence of any expressions of endorsement for or opposition to candidates for public office, an organization may publish a newsletter containing voting records and its opinions on issues of interest to it provided that the voting records are not widely distributed to the general public during an election campaign or aimed, in view of all the facts and circumstances, towards affecting any particular election.") with G.C.M. 39,811 (Feb. 9, 1990) (Section 501(c)(3)

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VOTER GUIDES		
		organization distributed a voters survey on the views of candidates on abortion, homosexual rights, ERA, church-school freedom, and nuclear freeze; organization adjured readers to recognize that, as Christians, they had an obligation, founded in Scripture, to vote conscientiously for godly rule; voters survey violated prohibition on campaign intervention). 4. (a) In IRS Publication 1828, Tax Guide for Churches and Religious Organizations, at 15 (Aug. 2015), the IRS provides the following guidelines for determining whether a voter guide is nonpartisan: ● whether the candidates' positions are compared to the organization's position, ● whether the guide includes a broad range of issues that the candidates would address if elected to the office sought, ● whether the description of issues is neutral, ● whether all candidates for an office are included, and ● whether the descriptions of candidates' positions are either: - the candidates' own words in response to questions, or

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VOTER GUIDES		
		- a neutral, unbiased and, complete compilation of all candidates' positions. (b) IRS Publication 1828, Tax Guide for Churches and Religious Organizations, at 15 (Aug. 2015), provides the following examples of voter guides: Example 1: Church R, a Section 501(c)(3) organization, distributes a voter guide prior to elections. The voter guide consists of a brief statement from the candidates on each issue made in response to a questionnaire sent to all candidates for governor of State I. The issues on the questionnaire cover a wide variety of topics and were selected by Church R based solely on their importance and interest to the electorate as a whole. Neither the questionnaire nor the voter guide, through their content or structure, indicate a bias or preference for any candidate or group of candidates. Church R is not participating or intervening in a political campaign. Example 2: Church S, a Section 501(c)(3) organization distributes a voter guide during an election campaign. The voter guide is prepared using the responses of candidates to a questionnaire sent to candidates for major public offices. Although the questionnaire covers a wide range of topics, the wording of the questions evidence a bias on certain issues. By using a questionnaire structured in this way, Church S is participating or intervening in a political campaign.

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VOTER GUIDES		
		5. For candidate questionnaires, a Section 501(c)(3) organization should: (a) present the questions and responses as they were asked and received; (b) provide the candidates with the opportunity to respond to questions in their own words, rather than not limit responses to yes/no or support/oppose responses; (c) invite all candidates seeking election to respond to the questionnaire; (d) not use the questions and any accompanying materials to comment on the candidates' positions; and (e) not request candidates to pledge to support a particular position. 6. On September 15, 2005, the IRS approved the application for exemption under Code Section 501(c)(4) of Christian Coalition International ("CCI"). Exempt Organization Tax Journal, at 48 (September/October 2005). In its application, CCI stated it would distribute nonpartisan voter guides through churches and other Section 501(c)(3) organizations that met the following guidelines: (a) The voter guide candidate surveys will include a broad range of issues selected solely on the basis of their importance and interest to the electorate as a whole and will not, in content or structure, evidence a bias or preference with respect to the views of any candidate or group of candidates. (b) The questions will be asked and presented in a clear, complete and unbiased manner.

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VOTER GUIDES		
		(c) CCI may use different surveys or questionnaires for different races. For example, all House candidates will receive the same candidate surveys or questionnaires, while all Senatorial candidates may receive another survey or questionnaire. Each version of a survey or questionnaire prepared for a race, however, will have the same questions, i.e., all House surveys or questionnaires will be identical and have the same questions. (d) The candidate survey will be distributed to candidates and allow no less than twenty-one days for the candidate to respond. (e) The surveys will require each question to be answered with either "support," "oppose," or "undecided" (or yes, no, or undecided) and only then will the candidate be afforded an opportunity to provide additional comment of up to twenty-five words on the subject of the question. The survey will inform the candidates that only the first twenty-five words on any response will be printed. CCI will not edit or alter candidate statements except to remove profane or scandalous words. Complete candidate surveys and responses will be made available on CCI's website. (f) Questions displayed on the voter guide will use the same words as the questions to which the candidates were asked to respond.

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		(g) Responses will be adjacent to the question or conspicuously displayed on the same page in a manner that clearly relates the response to the question. (h) The printed voter guides will be initially distributed no later than the second Sunday before the upcoming election to which they apply, and be posted on CCI's website on or before that date. (i) If permitted under applicable election law, the voter guide will include the candidates' website addresses. (j) The printed voter guides will display no fewer than six questions asked of the candidate. (k) If a candidate does not respond, CCI will put on the voter guide a statement that no response was provided. CCI will attempt to determine the position of that candidate on each issue present in the voter guide, and represent that position by stating "supports," "opposes," or "undecided" in response to the question. In determining the candidate's position, CCI will prepare a neutral, unbiased, and complete compilation of a candidate's position. CCI will look to sources such as the candidate's stump speeches, newspaper articles, campaign literature, published positions described on the candidate's website, legislative votes, and legislative votes on single-issue bills. If all or some of the candidate's positions are determined from sources other

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VOTER GUIDES		
		than the candidate's survey responses, an asterisk or similar symbol will be used on the voter guide and will state that the sources of these positions are available upon request. CCI will display the sources on its website. If CCI cannot clearly or reasonably determine a candidate's position on the issue, it will reflect the candidate's position as "unknown" or "unclear." 7. The guideline in Paragraph 6(c) above requiring the same questions for candidates for the same types of office prevents framing of questions that promote or attack candidates whose views the organization favors or disfavors. In addition, the guidelines do not require that the questionnaires go to candidates from minor parties. Finally, the questionnaires can focus on the issues of most importance to the organization, as long as the questions are worded in an unbiased manner, and the voter guides are not distributed with other materials stating the organization's views. 8. An unresolved question is if in a two candidate race, one candidate provides answers to a questionnaire and the other candidate does not, can the Section 501(c)(3) organization publish the answers of the one candidate, and state that the other candidate did not provide answers? The IRS can take the position that this approach shows a bias toward a particular candidate, and therefore violates the prohibition against campaign intervention. The Section 501(c)(3) organization can take the position that

ACTIVITY	FEDERAL ELECTION CAMPAIGN ACT OF 1971, AS AMENDED ("FECA")	INTERNAL REVENUE CODE OF 1986, AS AMENDED ("I.R.C.")
VOTER GUIDES		
		the decision not to provide answers is solely that of the candidate, and not the organization, and to find prohibited campaign intervention enables the unresponsive candidate to undermine the organization's right to engage in nonpartisan educational activities simply by refusing to provide answers. Cf. Rev. Rul. 2007-41, Situation 8, 2007-1 C.B. 1421, 1423 and IRS Fact Sheet 2006-17, Example 8 (Feb. 2006) (Congressional race has four candidates; Section 501(c)(3) organization invites candidates to address its members, one candidate at a regular meeting held on successive weeks; one candidate declines invitation to speak; in the publicity announcing the dates for each of the candidate's speeches, organization includes a statement that the order of the speakers was determined at random and the fourth candidate declined the invitation to speak; the president of the organization makes the same statement in his opening remarks at each meeting; organization's actions do not constitute political campaign intervention). 9. A Section 501(c)(3) organization should not distribute voter guides prepared by a candidate, political party, or PAC because they are prepared to improve or diminish a candidate's prospects for election. 2002 CPE Text, at 372. 10. The rating of elective judicial candidates as "approved," "approved as highly qualified," and "not approved," based

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VOTER GUIDES		
		on experience and professional ability and character, and without comparisons between candidates, violated the prohibition against campaign intervention. Association of the Bar of the City of New York v. Commissioner, 858 F.2d 876 (2d Cir. 1988), cert. denied, 490 U.S. 1030 (1989). The ratings were impermissible because they "showed a bias toward particular candidates." 2002 CPE Text, at 350. See also Rev. Rul. 67-368, 1967-2 C.B. 194 (organization whose primary activity was rating candidates for public office was not exempt under Code Section 501(c)(4) because the activity was not the promotion of social welfare); T.A.M. 9635003 (April 19, 1996) (forums were composed of participants selected through a scientific method to reflect the democratic characteristics of a community, but publication of the participants' ratings of the candidates was improper campaign intervention). Cf. FEC v. Christian Coalition, 52 F. Supp. 2d 45, 61 (D.D.C. 1999) (in 1994 the Christian Coalition mailed a six page letter signed by its President, Pat Robertson, and a congressional scorecard entitled, "Reclaiming America." The scorecard contained the voting records of all members of Congress and scored each member based on the member's agreement with the Coalition's position on certain issues; court held that the mailing did not violate FECA because it did not expressly direct the reader to vote or take action based on the ratings, and a reasonable person could have understood the mailing to

ACTIVITY	FEDERAL ELECTION CAMPAIGN ACT OF 1971, AS AMENDED ("FECA")	INTERNAL REVENUE CODE OF 1986, AS AMENDED ("I.R.C.")
VOTER GUIDES		
		be an effort to educate Christians on congressional activity; "[Express advocacy] is determined first and foremost by the words used. More specifically, the 'express advocacy' standard requires focus on the verbs.").
		11. An organization formed to promote public education engaged in prohibited campaign intervention when it evaluated the qualifications of candidates for the school board every four years and published a slate of candidates that the organization found best qualified together with their biographies. "[T]he organization's activity in evaluating the qualifications of all potential candidates and then selecting and supporting a particular slate constitutes participation in a political campaign on behalf of particular candidates, even though its process of selection may have been completely objective and unbiased and was intended primarily to educate and inform the public about the candidates." Rev. Rul. 67-71, 1967-1 C.B. 125.
		12. A Section 501(c)(3) organization that requested candidates to conduct their campaigns in accordance with a code of fair campaign practices, and published the names of candidates who support the code, violated the prohibition against campaign intervention. Rev. Rul. 76-456, 1976-2 C.B. 151.

A GUIDE TO ELECTION YEAR ACTIVITIES OF SECTION 501(C)(3) AND 501(C)(4) ORGANIZATIONS

ACTIVITY	FEDERAL ELECTION CAMPAIGN ACT OF 1971, AS AMENDED ("FECA")	INTERNAL REVENUE CODE OF 1986, AS AMENDED ("I.R.C.")
CANDIDATE APPEARANCES AND ADVERTISEMENTS		
	1. (a) A corporation, such as a Section 501(c)(4) organization, can permit candidates and their representatives to appear at its premises or at a corporate function to address employees beyond the corporation's restricted class. If the corporation allows one candidate to appear, all candidates who request to appear must be given a similar opportunity. 11 C.F.R. §114.4(b)(1)(i)-(ii). Unless clearly impractical, the corporation must make similar times and locations available to all candidates who wish to appear. 11 C.F.R. §114.4(b)(1)(vi). (b) The corporation and its PAC cannot, in conjunction with any appearance, expressly advocate the election or defeat of any clearly identified candidate, or candidates of a clearly identified political party, and cannot promote or encourage express advocacy by employees. 11 C.F.R. §114.4(b)(1)(v); FEC Advisory Opinion 1999-2; FEC Advisory Opinion 1992-5. (c) The corporation, its restricted class, any other employees, and the corporation's PAC, cannot, either orally or in writing, solicit or direct or control contributions by members of the audience to any candidate or party in conjunction with any appearance by any candidate or party representative, and cannot facilitate the making of contributions by any candidate or party. 11 C.F.R. §114.4(b)(1)(iv). (d) The corporation can discuss with the candidate or the candidate's authorized committee the structure, format, and	1. Candidates often seek permission to appear in their candidate capacity before the members of a Section 501(c)(3) organization, or the public, at the organization's premises. The Section 501(c)(3) organization can agree to the appearance, and should state in all advertisements it pays for and notices of the appearance it issues that the organization does not support or oppose the candidate. The organization should repeat this disclaimer at the appearance when introducing the candidate. In addition, the organization should prohibit any fundraising for the candidate at the appearance. The organization does not have to invite all candidates to the same event, but should invite all candidates to an event with the same level of publicity and with similar expected attendance. 2002 CPE Text, at 381; PLR 201712017 (IRS denied Section 501(c)(3) status to organization when the organization and its branches would become the place for political action, ideas, education, and camaraderie, and would host debates and have candidates ask each other questions; organization would find ways to educate voters and always play to win within city councils, boards of supervisors, and school boards; organization sought to open channels of communication with the city council, board of supervisors, congressman, state assemblyman and senator, and help them); PLR 201712015 (IRS denied Section 501(c)(3) status to organization when it held events in which predominantly H candidates were invited to speak to the organization's members; the

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CANDIDATE APPEARANCES AND ADVERTISEMENTS		
	timing of the candidate's appearance and the candidate's positions on issues, but cannot discuss the candidate's plans, projects, or campaign. 11 C.F.R. §114.4(b)(1)(vii). (e) At the appearance, candidates can advocate their election, solicit funds for their campaigns, and distribute campaign materials and preaddressed envelopes for contributions. They cannot accept contributions at the event. 11 C.F.R. §114.4(b)(1)(iv). (f) If the corporation permits news coverage for any appearance, it must allow coverage for all other candidates who appear, and all news media must be afforded equal access. Equal access means the corporation must provide advance notice regarding the appearance to the representatives of the news media whom the corporation customarily contacts and other representatives of the news media upon request. The corporation must also allow all representatives of the news media to cover or carry the appearance, including through the use of pooling arrangements if necessary. 11 C.F.R. §§114.3(c)(2)(iv) and 114.4(b)(1)(viii). 2. (a) A corporation, such as a Section 501(c)(4) organization, can permit a candidate, candidate's representative, or party representative to appear at the corporation's premises or at a corporate function to address the corporation's restricted class. Conversely, a corporation can bar other candidates for the same office or a different office and their representatives,	organization's website linked to an event for a current H Senator and H Senatorial candidate, and there were no links to other candidates' websites or events; as part of organization's GOTV effort, it encouraged its members to participate in local GOTV efforts, be they run by the County H, P, N, Q or any other valid political group its members were comfortable supporting; organization's meeting minutes discussed ways to vastly increase the percentage of R and H who voted in S; volunteers would try to find twenty people in each precinct to get out the vote and pass out e-mail contacts with the precinct of each member listed; organization cited these as overly optimistic, and that voter turnout of these two populations were historically high); PLR 201523021 (organization was an action organization and not operated exclusively for charitable and educational purposes when it planned to hold a symposium inviting candidates or current positioned politicians from only one party, promote those speakers through the symposium, and hold the symposium before a presidential primary). See also Rev. Rul. 2007-41, 2007-1 C.B. 1421, 1423 and IRS Fact Sheet 2006-17 (Feb. 2006) ("[A]n organization that invites one candidate to speak at its well-attended annual banquet, but invites the opposing candidate to speak at a sparsely attended general meeting, will likely have violated the political campaign prohibition, even if the manner of presentation for both speakers is otherwise

ACTIVITY	FEDERAL ELECTION CAMPAIGN ACT OF 1971, AS AMENDED ("FECA")	INTERNAL REVENUE CODE OF 1986, AS AMENDED ("I.R.C.")
CANDIDATE APPEARANCES AND ADVERTISEMENTS		
	and representatives of other parties, from addressing the restricted class. 11 C.F.R. §114.3(c)(2)(i). (b) The candidate, candidate's representative, or party representative can ask for contributions to his or her campaign or party. The candidate, candidate's representative, or party representative (other than an officer, director, or other representative of the corporation) can accept contributions before, during, or after the appearance. 11 C.F.R. §114.3(c)(2)(ii). (c) The corporation can suggest that members of its restricted class contribute to the candidate or party committee, but the collection of contributions by any officer, director, or other representative of the corporation before, during, or after the appearance while at the meeting is prohibited corporate facilitation of contributions under 11 C.F.R. §114.2(f). 11 C.F.R. §114.3(c)(2)(iii). (d) If the corporation permits news coverage for any appearance, it must allow coverage for all other candidates who appear, and all news media must be afforded equal access. Equal access means the corporation must provide advance notice regarding the appearance to the representatives of the news media whom the corporation customarily contacts and other representatives of the news media upon request. The corporation must also allow all representatives of the news media to cover or carry the	neutral."); IRS Publication 1828, Tax Guide for Churches and Religious Organizations, at 11 (Aug. 2015) (similar language); Letter of Steven T. Miller, Director, Exempt Organizations Division, Internal Revenue Service to Treasurers of Democratic National Committee, Republican National Committee, America First National Committee, Constitution Party National Committee, Green Party of the United States, Libertarian National Committee Inc., and Natural Law Party of the United States, June 10, 2004 (available at http://www.irs.gov/newsroom/article/0,,id= 123922,00.html). 2. A noncommercial Section 501(c)(3) broadcasting station can provide candidates with free air time to present their views as long as the station grants all legally qualified candidates equal access in accordance with the requirements of Section 312(a)(7) of the Federal Communications Act of 1934, as amended. In addition, before and after each broadcast, the station makes the statement that the views expressed are those of the candidate and not those of the station; that the station does not endorse any candidate or viewpoint; that the presentation is made as a public service in the interest of informing the electorate; and that equal opportunities will be presented to all bona fide legally qualified candidates for the same public office to present their views. Rev. Rul. 74-574, 1974-2 C.B. 160; 2002 CPE Text, at 377.

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CANDIDATE APPEARANCES AND ADVERTISEMENTS		
	appearance, including through the use of pooling arrangements if necessary. 11 C.F.R. §§114.3(c)(2)(iv). (e) Restricted class means a corporation's executive or administrative personnel and their families, and its stockholders and their families. The restricted class of an incorporated membership organization also includes its individual members and their families. 11 C.F.R. §114.1(c), (h), and (j). 3. A Section 501(c)(3) organization's activities in organizing and sponsoring appearances of presidential candidates at a public meeting would not produce nonpartisan communications when the candidates would advocate their own election, and would be identified as candidates in their introductions and literature distributed at the public meeting. Furthermore, the appearances would not be a nonpartisan debate because there would not be a face-to-face confrontation between at least two candidates. FEC Advisory Opinion 1986-37. 4. (a) An incorporated Section 501(c)(3) educational institution can sponsor appearances of candidates, candidates' representatives, or representatives of political parties at which these persons address or meet the institution's academic community or general public (whichever is invited) on the institution's premises at no charge or at less than the usual and normal charge, if: (i) the institution uses reasonable efforts to ensure that the appearances contain	3. (a) IRS Publication 1828, Tax Guide for Churches and Religious Organizations, at 12 (Aug. 2015), provides the following example of a permissible candidate appearance: Example 1: Minister E is the minister of Church N, a section 501(c)(3) organization. In the month prior to the election, Minister E invited the three Congressional candidates for the district in which Church N is located to address the congregation, one each on three successive Sundays, as part of regular worship services. Each candidate was given an equal opportunity to address and field questions on a wide variety of topics from the congregation. Minister E's introduction of each candidate included no comments on their qualifications or any indication of a preference for any candidate. The actions do not constitute political campaign intervention by Church N. The IRS used a similar example in Rev. Rul. 2007-41, Situation 7, 2007-1 C.B. 1421, 1423 and IRS Fact Sheet 2006-17, Example 7 (Feb. 2006). (b) The IRS elaborated on the prior example in IRS Publication 1828, Tax Guide for Churches and Religious Organizations, at 12 (Aug. 2015): Example 2: The facts are the same as in Example 1 except that there are four candidates in the race rather than three, and one of the candidates declines the invitation to speak.

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CANDIDATE APPEARANCES AND ADVERTISEMENTS		
	speeches, question and answer sessions, or similar communications in an academic setting, and uses reasonable efforts to ensure that the appearances are not conducted as campaign rallies or events; and (ii) the institution does not, in conjunction with the appearance, expressly advocate the election or defeat of any clearly identified candidate(s), or candidates of a clearly identified political party, and does not favor any one candidate or political party over any other in allowing the appearances. 11 C.F.R. §114.4(c)(7)(ii). (b) To satisfy these requirements, the educational institution should use reasonable efforts to prohibit campaign banners, posters, balloons, and similar items at the appearance. (c) In MUR 5392 (General Wesley K. Clark), the FEC applied a similar regulation for public educational institutions, 11 C.F.R. §110.12. General Wesley K. Clark, a candidate for the Democratic nomination for President, gave a public lecture at the University of Iowa Law School two days after he announced his candidacy. The University prohibited signs in the lecture hall and the distribution of pamphlets in the building, and cancelled the customary press conference before the lecture. The Dean of the Law School advised General Clark that the lecture must remain academic and not turn into a campaign rally. The Dean also advised the audience that political activities such as banner waving and chanting were not acceptable, and asked that the audience submit written questions, which he prescreened to exclude questions relating to General Clark's candidacy. In	In the publicity announcing the dates for each of the candidate's speeches, Church N includes a statement that the order of the speakers was determined at random and the fourth candidate declined the Church's invitation to speak. Minister E makes the same statement in his opening remarks at each of the meetings where one of the candidates is speaking. Church N's actions do not constitute political campaign intervention. The IRS also used a similar example in Fact Sheet 2006-17 (Feb. 2006), and Rev. Rul. 2007-41, Situation 8, 2007-1 C.B. 1421, 1423. 4. In IRS Fact Sheet 2006-17 (Feb. 2006), the IRS provides the following example of impermissible campaign intervention: Example 9: Minister F is the minister of Church O, a section 501(c)(3) organization. The Sunday before the November election, Minister F invites Senate Candidate X to preach to her congregation during worship services. During his remarks, Candidate X states, "I am asking not only for your votes, but for your enthusiasm and dedication, for your willingness to go the extra mile to get a very large turnout on Tuesday." Minister F invites no other candidate to address her congregation during the Senatorial campaign. Because these activities take place during official church services, they are attributed to Church O. By selectively providing church facilities to allow Candidate X to speak in support of his campaign,

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CANDIDATE APPEARANCES AND ADVERTISEMENTS		
	the lecture, General Clark referred to the negative aspects of President Bush's foreign policy and alleged domestic policy failures. The FEC found no reason to believe that a violation of FECA occurred, and that the Law School made reasonable efforts to maintain an academic environment. In addition, the regulation did not prohibit collateral campaign events before or after a sponsored appearance independent of the educational institution. 5. (a) A corporation, such as a Section 501(c)(4) organization, can make communications that endorse a candidate to its restricted class and the general public. These communications can be independent expenditures or electioneering communications. The preparation, contents, and distribution of the communications cannot include coordinated expenditures under 11 C.F.R. §109.20, coordinated communications under 11 C.F.R. §109.21, or contributions under 11 C.F.R. Part 100, subpart B. The general public includes anyone who is not in the corporation's restricted class. 11 C.F.R. §114.4(c)(1) and (6)(i). (b) Disbursements for announcements of endorsements to the general public are not contributions or expenditures as long as: (i) the public announcement is not coordinated with a candidate, a candidate's authorized committee, or their agents; and (ii) disbursements for any press release or press conference to announce the endorsement are de minimis. Disbursements are de minimis if the press release and notice	Church O's actions constitute political campaign intervention. The IRS also used this example in Rev. Rul. 2007-41, Situation 9, 2007-1 C.B. 1421, 1423, and IRS Publication 1828, Tax Guide for Churches and Religious Organizations, Example 3, at 13 (Aug. 2015). 5. In IRS Publication 1828, Tax Guide for Churches and Religious Organizations, at 13 (Aug. 2015), the IRS provides the following guidelines for appearances by incumbents and candidates in a noncandidate capacity: Like any other Section 501(c)(3) organization, a church or religious organization may invite political candidates (including church members) to speak in a noncandidate capacity. For instance, a political candidate may be a public figure because he or she: (a) currently holds, or formerly held, public office; (b) is considered an expert in a nonpolitical field; or (c) is a celebrity or has led a distinguished military, legal, or public service career. A candidate may choose to attend an event that is open to the public, such as a lecture, concert, or worship service. The candidate's presence at a church-sponsored event does not, by itself, cause the organization to be involved in political campaign intervention. However, if the candidate is publicly recognized by the organization, or if the candidate is invited to speak, factors in determining whether the candidate's appearance results in political campaign intervention include:

ACTIVITY	FEDERAL ELECTION CAMPAIGN ACT OF 1971, AS AMENDED ("FECA")	INTERNAL REVENUE CODE OF 1986, AS AMENDED ("I.R.C.")
CANDIDATE APPEARANCES AND ADVERTISEMENTS		
	of the press conference are distributed only to the representatives of the news media that the corporation customarily contacts when issuing nonpolitical press releases or holding press conferences for other purposes. 11 C.F.R. §114.4(c)(6)(ii). (c) In light of the prohibition on coordinated communications, the corporation should not consult with the candidate regarding the endorsement, and the candidate should not appear at any press conference at which the corporation announces its endorsement. (d) Disbursements for announcements of endorsements to the restricted class may be coordinated under 11 C.F.R. §114.3(a). The disbursements are not contributions or expenditures provided that no more than a de minimis number of copies of the publication that includes the endorsement are circulated beyond the restricted class. 11 C.F.R. §114.4(c)(6)(iii). (e) A corporation can distribute to its restricted class printed material expressly advocating the election or defeat of one or more clearly identified candidates of a clearly identified political party as long as the material: (i) is produced at the corporation's expense; and (ii) reflects the corporation's views, and is not the republication or reproduction, in whole or in part, of any broadcast, transcript, tape, or any written, graphic, or other form of campaign materials prepared by the candidate, his or her campaign committee, or their authorized	● whether the individual speaks only in a noncandidate capacity; ● whether either the individual or any representative of the church makes any mention of his or her candidacy or the election; ● whether any campaign activity occurs in connection with the candidate's attendance; ● whether the individual is chosen to speak solely for reasons other than candidacy for public office; ● whether the organization maintains a nonpartisan atmosphere on the premises or at the event where the candidate is present; and ● whether the organization clearly indicates the capacity in which the candidate is appearing and does not mention the individual's political candidacy or the upcoming election in the communications announcing the candidate's attendance at the event. In addition, the church or religious organization should clearly indicate the capacity in which the candidate is appearing and shouldn't mention the individual's political candidacy or the upcoming election in the communications announcing the candidate's attendance at the event.

ACTIVITY	FEDERAL ELECTION CAMPAIGN ACT OF 1971, AS AMENDED ("FECA")	INTERNAL REVENUE CODE OF 1986, AS AMENDED ("I.R.C.")
CANDIDATE APPEARANCES AND ADVERTISEMENTS		
	agents. A corporation can use brief quotations from speeches or other materials of a candidate that reflect the candidate's position as part of the corporation's expression of its own views. 11 C.F.R. §114.3(c)(1). These communications are exempt from the definition of expenditure. 52 U.S.C. §30101(9)(B)(iii). (f) Restricted class means a corporation's executive or administrative personnel and their families, and its stockholders and their families. The restricted class of an incorporated membership organization also includes its individual members and their families. 11 C.F.R. §114.1(c), (h), and (j). 6. (a) A corporation can solicit a contribution or recommend a contribution to a particular candidate in a communication to its restricted class. 11 C.F.R. §§114.1(a)(2)(i) and 114.2(f)(4)(ii). (b) Whether a communication solicits contributions turns on whether the language or information provided would either encourage readers to support a PAC's activities, or facilitate making contributions to the PAC. The solicitation determination is important because if a communication is not a solicitation, it may be made to employees beyond the restricted class. For example, solicitation occurred when a newsletter set forth the amounts raised and spent by the PAC, the methods used by the PAC to determine the recipients of its contributions, the number of employees	The IRS provided similar guidelines in Rev. Rul. 2007-41, 2007-1 C.B. 1421, 1423-24. 6. In IRS Fact Sheet 2006-17 (Feb. 2006), the IRS provides the following examples of appearances in a noncandidate capacity: Example 10: Historical society P is a section 501(c)(3) organization. Society P is located in the state capital. President G is the president of Society P and customarily acknowledges the presence of any public officials present during meetings. During the state gubernatorial race, Lieutenant Governor Y, a candidate, attends a meeting of the historical society. President G acknowledges the Lieutenant Governor's presence in his customary manner, saying "We are happy to have joining us this evening Lieutenant Governor Y." President G makes no reference in his welcome to the Lieutenant Governor's candidacy or the election. Society P has not engaged in political campaign intervention as a result of President G's actions. The IRS also used this example in Rev. Rul. 2007-41, Situation 10, 2007-1 C.B. 1421, 1424, and a similar example in IRS Publication 1828, Tax Guide for Churches and Religious Organizations, Example 1, at 14 (Aug. 2015). Example 11: Chairman H is the chairman of the Board of Hospital Q, a section 501(c)(3) organization. Hospital Q is building a new wing. Chairman H invites Congressman

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CANDIDATE APPEARANCES AND ADVERTISEMENTS		
	participating in the past year, and contained a quotation from the PAC's chairman commending the enthusiasm of those employees. FEC Advisory Opinion 1979-13. As another example, an article in a corporation's monthly newsletter did not solicit contributions when the article announced the formation of a PAC and stated that the PAC would solicit funds only from high-level employees, that the funds would be used to make contributions to federal candidates, that amounts contributed to and by the PAC would be limited under federal law, that steps must be taken to ensure that employee contributions were strictly voluntary and without coercion, and that a committee of employees would decide which candidates the PAC would support. The FEC found that while the article may engender inquiries about the PAC from employees who were not members of the restricted class, it did not encourage or facilitate participation, did not praise employees for contributing, and did not inform the reader that unsolicited contributions from employees beyond the restricted class would be accepted. FEC Advisory Opinion 1983-38; see also FEC Advisory Opinions 2003-14, 2000-7; 1999-6; 1979-66. (c) When soliciting contributions, the corporation cannot facilitate the making of contributions. 11 C.F.R. 114.2(f)(1)-(2). An example of facilitation is providing envelopes and stamps to transmit the contribution. FEC Advisory Opinion 2003-22. Facilitation does not include the corporation making an endorsement and sending follow-up reminders for	Z, the representative for the district containing Hospital Q, to attend the groundbreaking ceremony for the new wing. Congressman Z is running for reelection at the time. Chairman H makes no reference in her introduction to Congressman Z's candidacy or the election. Congressman Z also makes no reference to his candidacy or the election and does not do any fundraising while at Hospital Q. Hospital Q has not intervened in a political campaign. The IRS also used this example in Rev. Rul. 2007-41, Situation 11, 2007-1 C.B. 1421, 1424, and a similar example in IRS Publication 1828, Tax Guide for Churches and Religious Organizations, Example 2, at 14 (Aug. 2015). Example 13: Mayor G attends a concert performed by Symphony S, a section 501(c)(3) organization, in City Park. The concert is free and open to the public. Mayor G is a candidate for reelection, and the concert takes place after the primary and before the general election. During the concert, the chairman of S's board addresses the crowd and says, "I am pleased to see Mayor G here tonight. Without his support, these free concerts in City Park would not be possible. We will need his help if we want these concerts to continue next year so please support Mayor G in November as he has supported us." As a result of these remarks, Symphony S has engaged in political campaign intervention. The IRS also used this example in Rev. Rul. 2007-41, Situation 13, 2007-1 C.B.

ACTIVITY	FEDERAL ELECTION CAMPAIGN ACT OF 1971, AS AMENDED ("FECA")	INTERNAL REVENUE CODE OF 1986, AS AMENDED ("I.R.C.")
CANDIDATE APPEARANCES AND ADVERTISEMENTS		
	pledged contributions that also contain a notice that participation is voluntary. FEC Advisory Opinion 1996-1; FEC Advisory Opinion 1987-29. 7. A candidate can appear in a noncandidate capacity not subject to FECA when: (a) the event does not involve the solicitation, making, or acceptance of contributions to the candidate's campaign, whether at the event or in the invitations; (b) the event does not involve communications expressly advocating the nomination, election, or defeat of any candidate; (c) the sponsoring organization, and not the candidate, controls the conduct of the event and who is admitted; (d) in any speech and during any question and answer period, the candidate does not refer to his or her campaign, or to the campaign or qualifications of another candidate; (e) neither the candidate nor his or her staff coordinates or encourages the display of campaign banners or decorations, or the distribution of campaign materials; (f) no collateral campaign events, e.g., luncheons, dinners, press conferences and rallies, are held nearby shortly before or after the event; and	1421, 1424, and a similar example in IRS Publication 1828, Tax Guide for Churches and Religious Organizations, Example 4, at 14 (Aug. 2015). 7. If a member of the clergy is a candidate, and participates in a worship service as a candidate, the rules in Paragraphs 1, 3, and 4 above apply. If a member of the clergy is a candidate, and participates in a worship service solely as a member of the clergy and not as a candidate, the rules in Paragraph 5 above apply. 8. In IRS Publication 1828, Tax Guide for Churches and Religious Organizations, Example 3, at 14 (Aug. 2015), the IRS provides the following example of a church member's permissible use of a church newsletter to advise other church members of his or her candidacy: Example 3: Church X is a Section 501(c)(3) organization. Church X regularly publishes a member newsletter. Individual church members are invited to send in updates about their activities, 0which are printed in each edition of the newsletter. After receiving an update letter from Member Q, Church X prints the following: "Member Q is running for city council in Metropolis." The newsletter does not contain any reference to this election or to Member Q's candidacy other than this statement of fact. Church X has not intervened in a political campaign.

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CANDIDATE APPEARANCES AND ADVERTISEMENTS		
	(g) the sponsoring organization pays any honorarium to the candidate and not the campaign. FEC Advisory Opinion 2004-15; FEC Advisory Opinion 1999-2; FEC Advisory Opinion 1996-11; FEC Advisory Opinion 1992-6. 8. (a) In FEC Advisory Opinion 1996-11, the FEC addressed the permissible activities that can occur as part of a candidate's appearance in a noncandidate capacity at the convention of an issue advocacy group. Two Members of Congress, one who was a candidate for re-election, and one a candidate for President, planned to speak at the convention of the National Right to Life Conventions, Inc. ("NRL"), a subsidiary of the National Right to Life Committee, Inc., a Section 501(c)(4) membership organization. Most of the attendees at the convention would be the general public, and most were not voters from the speaker's home district. The campaign committees of the speakers would hold concurrent campaign events at the same hotel as the convention. The speakers could attend the convention in a noncandidate capacity not subject to FECA when: (i) all communications by NRL and any person on its behalf, the candidates and their staff, representatives and agents, did not expressly advocate the nomination, election, or defeat of any candidate; (ii) anyone introducing the speakers did not discuss the candidacy except to briefly note the fact that the speaker was a candidate; (iii) there was no solicitation, making, or acceptance of contributions to the candidate's campaign or distribution of campaign materials at	9. Publications of Section 501(c)(3) organizations can accept paid political advertising if: (a) the organization charges a fair market rate. Free or reduced rate advertising is likely to be an impermissible in-kind contribution; (b) the organization accepts the advertising on the same basis as nonpolitical advertising other than for free or at a reduced rate; (c) the organization places a statement preceding the advertisements that they are paid political advertisements and do not reflect the views of the organization. The organization also may wish to state that it is prohibited from endorsing candidates for public office, and the acceptance and publication of an advertisement is not an endorsement; (d) the organization solicits advertisements in a nonpartisan manner according to established guidelines or customary business practices; and (e) the organization provides the same treatment, such as the same fair market rate, to all candidates who wish to advertise. Rev. Rul. 74-574, 1974-2 C.B. 161; 2002 CPE Text, at 383.

ACTIVITY	FEDERAL ELECTION CAMPAIGN ACT OF 1971, AS AMENDED ("FECA")	INTERNAL REVENUE CODE OF 1986, AS AMENDED ("I.R.C.")
CANDIDATE APPEARANCES AND ADVERTISEMENTS		
	convention functions; (iv) any contribution from the National Right to Life's political committee to a candidate's campaign was not in consideration for the speaker's appearance at the convention; (v) if NRL knew that the candidates' campaign committees would sponsor collateral campaign events at the convention facilities during the convention, NRL did not use its general treasury funds to pay the travel costs for the candidates and their representatives and staff. NRL had to notify each candidate that it would not pay travel costs if the candidate held a collateral campaign event; (vi) NRL did not use its general treasury funds to make expenditures for communications to announce or publicize campaign events when the communications were directed to the general public attending the convention; and (vii) any candidates who wished to advertise in the convention program book paid NRL in advance the usual and normal charge for the advertisements. (b) With respect to NRL providing free video and audio tapes of the speeches to the candidate speakers, NRL could do so regardless of whether the candidates used the tapes to promote their candidacies or to raise funds. An impermissible contribution would result if NRL distributed the taped speeches free of charge to news organizations or to the general public, since the taping and distribution of the candidates' views on the issues addressed at the convention was something of value to the candidates. NRL could sell the tapes to news organizations or the general public for the	10. A Section 501(c)(3) organization should not solicit ads from one candidate while only accepting ads from other candidates. 11. Income from political advertising is unrelated business taxable income subject to tax. I.R.C. §513(c); United States v. American College of Physicians, 475 U.S. 834 (1986); Treas. Reg. §1.512(a)-1(d)(1) and (f); 2002 CPE Text, at 384. 12. For letters to the editor in publications of Section 501(c)(3) organizations, the organization should: (a) select letters for publication based on criteria other than whether the letter supports the organization's position on an issue; (b) publish letters that take positions on both sides of an issue; (c) refrain from publishing letters from candidates and organizations that support or oppose candidates; and (d) place disclaimers that the letters reflect solely the opinions of their authors and not the Section 501(c)(3) organization. 13. An affiliated Section 501(c)(4) organization is not subject to the restrictions described in this column.

ACTIVITY	FEDERAL ELECTION CAMPAIGN ACT OF 1971, AS AMENDED ("FECA")	INTERNAL REVENUE CODE OF 1986, AS AMENDED ("I.R.C.")
CANDIDATE APPEARANCES AND ADVERTISEMENTS		
	usual and normal charge. Under 11 C.F.R. §100.7(a)(l)(iii)(B) [now codified at 11 C.F.R. §100.52(d)(2)], usual and normal charge means the price of these goods in the market from which they ordinarily would have been purchased at the time of the contribution. (c) With respect to an NRL-sponsored press conference held at or near the convention site before, during, or after the convention, the candidate speakers could participate in the press conference to discuss pro-life issues and could be identified as candidates so long as: (i) NRL did not endorse the candidates during the press conference; (ii) neither NRL and its agents nor the candidates and their agents expressly advocated the election or defeat of any clearly identified candidate during the press conference; and (iii) the NRL's disbursements for the press conference were de minimis. Disbursements were de minimis if notice of the press conference was distributed only to those news organizations NRL customarily contacted when holding press conferences for other purposes. FEC Advisory Opinion 1996-11. 9. In determining whether a person appears in a candidate or noncandidate capacity, Section 501(c)(3) and 501(c)(4) organizations should consider the following guidelines: (a) Since nonincumbents generally do not perform governmental functions at an appearance, the organization	

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CANDIDATE APPEARANCES AND ADVERTISEMENTS		
	should presume that the nonincumbent appears in candidate capacity; (b) Whether the appearance is part of an informational tour of the organization's facilities; (c) Whether fundraising or the collection of names and addresses for subsequent solicitation occurs; (d) Whether the election or only issues of interest to the organization or the public are discussed; (e) The timing of the visit with respect to the election. As a visit occurs closer to an election, the greater the likelihood that the person appears in a candidate capacity. The organization should presume that a person appears in a candidate capacity when the visit occurs within thirty days before a primary election and sixty days before a general election; (f) whether the organization deals with the person's campaign staff or governmental staff in organizing the visit; and (g) whether the organization's facility is located in an incumbent's district so that the incumbent can address the voters in his or her election. 10. When an incumbent appears at an organization's facility, the organization should determine whether any restrictions under	

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CANDIDATE APPEARANCES AND ADVERTISEMENTS		
	lobbying and gift rules apply. The organization should determine whether the cost of any aspect of the visit is part of its lobbying expense that must be reported on the organization's filings.	

A GUIDE TO ELECTION YEAR ACTIVITIES OF SECTION 501(C)(3) AND 501(C)(4) ORGANIZATIONS

ACTIVITY	FEDERAL ELECTION CAMPAIGN ACT OF 1971, AS AMENDED ("FECA")	INTERNAL REVENUE CODE OF 1986, AS AMENDED ("I.R.C.")
CANDIDATE DEBATES		
	1. (a) Media organizations or Section 501(c)(3) or 501(c)(4) organizations can sponsor nonpartisan debates for federal candidates. The sponsoring organization cannot endorse, support, or oppose candidates or political parties. 11 C.F.R. §§110.13(a)(1)-(2) and 114.4(f)(1)-(2). (b) Nonmedia, for-profit corporations cannot stage debates. 52 U.S.C. §30118(a); La Botz v. Federal Election Commission, 889 F. Supp. 2d 51, 54-55 (D.D.C. 2012). This rule prevents debate staging organizations from operating as conduits for corporate contributions made to benefit only one or two candidates from the Democratic and Republican parties via the much-watched prime-time debates. Because debate staging requires coordination with candidates, it is an unlawful contribution or expenditure made to the participating campaigns. Level the Playing Field v. Federal Election Commission, 232 F. Supp. 3d 130, 135 (D.D.C. 2017). (c) The structure of the debates is left to the discretion of the staging organization, provided that the debates include at least two candidates, and the staging organization does not structure the debates to promote or advance one candidate over another. 11 C.F.R. §110.13(b). (d) For all debates, the staging organization must use pre-established objective criteria to determine which candidates may participate. For general election debates, the staging organization cannot use nomination by a particular political	1. Section 501(c)(3) organizations can sponsor candidate debates that provide a fair and neutral forum, and equal time to all legally qualified candidates. Under Rev. Rul. 86-95, 1986-2 C.B. 73, the IRS considers the following criteria in determining whether the organization satisfies this standard: (a) The debate should include all legally qualified candidates for the contested office, unless inviting one or more of the candidates is impractical, or does not further the organization's educational purpose. For example, an organization can invite only candidates from one party if the contested election is a primary election. Fulani v. League of Women Voters Education Fund, 882 F.2d 621 (2d Cir. 1989). As another example, an organization can invite the major party candidates and up to four candidates who have a fifteen percent share of the vote according to a credible, independent, state-wide poll. T.A.M. 9635003 (April 19, 1996); (b) The debate topics should cover a broad range of issues in addition to those most important to the Section 501(c)(3) organization; (c) The questions presented to the candidates should be prepared by an independent, nonpartisan panel. The panel could include members of the Section 501(c)(3) organization, the media, and community leaders;

ACTIVITY	FEDERAL ELECTION CAMPAIGN ACT OF 1971, AS AMENDED ("FECA")	INTERNAL REVENUE CODE OF 1986, AS AMENDED ("I.R.C.")
CANDIDATE DEBATES		
	party as the sole objective criterion to determine whether to include a candidate in a debate. For debates held prior to a primary election, caucus, or convention, the staging organization may restrict candidate participation to candidates seeking the nomination of one party, and need not stage a debate for candidates seeking the nomination of any other political party, or independent candidates. 11 C.F.R. §110.13(c). (e) If the staging organization does not satisfy the pre-established objective criteria requirement, the failure likely means that the cost of the debate is an in-kind contribution by the organization to the candidates who were selected to participate in the debate. (f) The FEC's regulations do not exceed its statutory authority. Becker v. FEC, 230 F.3d 381 (1st Cir. 2000), cert. denied sub nom. Nader v. FEC, 532 U.S. 1007 (2001). 2. A corporation or labor organization can contribute funds to a media organization or Section 501(c)(3) or 501(c)(4) organization to hold nonpartisan candidate debates in accordance with 11 C.F.R. §110.13. 52 U.S.C. §30101(9)(B)(ii); 11 C.F.R. §§114.1(a)(2)(x) and 114.4(f)(1) and (3); La Botz v. Federal Election Commission, 889 F. Supp. 2d 51, 54 (D.D.C. 2012). If the Section 501(c)(3) or 501(c)(4) organization does not satisfy the requirements of 11 C.F.R. §110.13, the FEC can take the position that the cost of the debate is an in-kind contribution by the	(d) A neutral moderator should be selected by the sponsoring organization, and his or her role should be limited to ensuring that the debate ground rules are followed. The moderator should not comment on the questions or the candidates' statements in any way that indicates approval or disapproval; (e) Each candidate should have an equal opportunity to present his or her views on the issues presented; and (f) The debate should begin and end with a statement that the views presented are those of the candidates, and not of the sponsoring organization, and that the organization's sponsorship of the debate is not an endorsement of any candidate. 2. A Section 501(c)(3) organization should send the same invitation to all candidates at the same time and in the same manner, e.g., overnight delivery, certified mail, or e-mail. 3. IRS Publication 1828, Tax Guide for Churches and Religious Organizations, at 11-12 (Aug. 2015), states that when a church or religious organization invites several candidates to speak at a forum, it should consider the following factors: ● whether questions for the candidate are prepared and presented by an independent nonpartisan panel,

A GUIDE TO ELECTION YEAR ACTIVITIES OF SECTION 501(C)(3) AND 501(C)(4) ORGANIZATIONS

ACTIVITY	FEDERAL ELECTION CAMPAIGN ACT OF 1971, AS AMENDED ("FECA")	INTERNAL REVENUE CODE OF 1986, AS AMENDED ("I.R.C.")
CANDIDATE DEBATES		
	corporation or labor organization to the candidates that participated in the debate. 3. A nonpartisan candidate debate must have a face-to-face confrontation of at least two candidates, rather than appearances at separate times. FEC Advisory Opinion 1986-37. 4. An electioneering communication does not include a candidate debate or forum conducted pursuant to 11 C.F.R. §110.13, or a communication that solely promotes such a debate or forum and is made by or on behalf of the person sponsoring the debate or forum. 52 U.S.C. §30104(f)(3)(B)(iii) (formerly 2 U.S.C. §434(f)(3)(B)(iii)); 11 C.F.R. §100.29(c)(4).	● whether the topics discussed by the candidates cover a broad range of issues that the candidates would address if elected to the office sought and are of interest to the public, ● whether each candidate is given an equal opportunity to present his or her views on the issues discussed, ● whether the candidates are asked to agree or disagree with positions, agendas, platforms or statements of the organization, and ● whether a moderator comments on the questions or otherwise implies approval or disapproval of the candidates.

A GUIDE TO ELECTION YEAR ACTIVITIES OF SECTION 501(C)(3) AND 501(C)(4) ORGANIZATIONS

ACTIVITY	FEDERAL ELECTION CAMPAIGN ACT OF 1971, AS AMENDED ("FECA")	INTERNAL REVENUE CODE OF 1986, AS AMENDED ("I.R.C.")
CANDIDATE USE OF FACILITIES AND OTHER ASSETS		
	1. (a) A corporation can allow a candidate to use its facilities as long as it receives reimbursement from the candidate at the usual and normal rental charge within a commercially reasonable time. 11 C.F.R. §§114.2(f)(2)(i)(B) and 114.9(d). (b) If a campaign committee uses corporate telephones, in addition to the cost of the calls, the reimbursement must include a charge for the use of the facilities. FEC Advisory Opinion 1995-8; FEC Advisory Opinion 1978-34. (c) A corporation that customarily makes its meeting rooms available to clubs, civic, or community organizations, or other groups, may make its facilities available to a candidate or political committee if the meeting rooms are made available to any candidate or political committee upon request and on the same terms given to other groups using the meeting rooms. 11 C.F.R. §114.13. (d) A corporation cannot provide catering or other food services unless the corporation receives advance payment for their fair market value. 11 C.F.R. §114.2(f)(2)(i)(E). (e) A corporation cannot expend its treasury funds for the benefit of candidates and later have the corporation's PAC reimburse it. Examples of expenditures are the costs of corporate facilities and the salaries of personnel who work on candidate events on corporate premises. Rather, the PAC must provide the corporation with funds in advance to pay these expenses. Alternatively, the corporation and its PAC	1. (a) A Section 501(c)(3) organization can allow a candidate to use its facilities as long as it makes them available to all candidates and political organizations on the same terms. The organization should charge fair market rent; by providing facilities for free or at a reduced rate the organization is likely to make an impermissible contribution. If the organization ordinarily makes its facilities available only to its members, it should not make them available to a candidate or political organization. If the organization ordinarily makes its facilities available to nonpolitical organizations, it should make them available to a candidate or political organization on the same terms other than for free or at a reduced charge. (b) The Section 501(c)(3) organization should require a candidate holding an event to read a statement, both at the beginning and end of the event, that the candidate's use of its facilities is not an endorsement of the candidate or the candidate's views by the organization. (c) The Section 501(c)(3) organization should not advertise, promote, or provide other services with respect to a candidate's or political organization's use of its facilities. (d) The materials for an event prepared by a candidate or political organization should not: (i) carry the name or logo of the Section 501(c)(3) organization; (ii) state that the Section 501(c)(3) organization is sponsoring the

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CANDIDATE USE OF FACILITIES AND OTHER ASSETS		
	can enter into joint employment agreements with the salaried personnel. FEC Advisory Opinion 1984-37; FEC Advisory Opinion 1984-24. (f) For example, Section 501(c)(4) organizations and Section 501(c)(6) trade associations often send personnel to work on the campaigns of candidates they have endorsed. To prevent the corporation from making a prohibited in-kind contribution to the candidate, the corporation's PAC must advance funds to the corporation for the salaries, benefits, and any other costs. The corporation can then draw down the funds as necessary to pay these expenses. As another example, if the PAC wants to use a corporation's conference room for a candidate fundraiser, the PAC must pay the fair market value rental charge for the room in advance of the event. 2. FECA exempts from the definition of contribution the use of real or personal property, including a church or community room used on a regular basis by members of a community for noncommercial purposes, and the cost of invitations, food, and beverages, voluntarily provided by an individual to any candidate or political committee of a political party in rendering voluntary personal services on the individual's residential premises or in the church or community room for candidate-related or political party-related activities, to the extent that the cumulative value of the invitations, food, and beverages provided by such individual on behalf of any single candidate does not exceed $1,000 for any single	event; or (iii) state that the Section 501(c)(3) organization supports or opposes any candidate or the views of any candidate. The materials can refer to the Section 501(c)(3) organization in providing the location of the event. Finally, the materials should contain a disclaimer that the candidate's use of the organization's facilities is not an endorsement of the candidate or the candidate's views by the organization. 2. IRS Publication 1828, Tax Guide for Churches and Religious Organizations, at 16 (Aug. 2015), states that in determining whether a church or religious organization engages in prohibited campaign intervention in its business transactions, such as the selling or renting of mailing lists, the leasing of office space, or the acceptance of paid political advertising, some of the factors to be considered are: ● whether the good, service, or facility is available to the candidates equally, ● whether the good, service, or facility is available only to candidates and not to the general public, ● whether the fees charged are at the organization's customary and usual rates, and

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CANDIDATE USE OF FACILITIES AND OTHER ASSETS		
	election, and on behalf of all political committees of a political party does not exceed $2,000 in any calendar year. 52 U.S.C. §30101(8)(B)(ii) (formerly 2 U.S.C. §431(8)(B)(ii)). 3. An incorporated Section 501(c)(3) educational institution can make its facilities available to any candidate or political committee in the ordinary course of business and at the usual and normal charge. 11 C.F.R. §114.4(c)(7)(i). 4. A contribution or expenditure does not occur when an individual, in the course of volunteering personal services to a candidate or political party committee, obtains the use of a church or community room and provides the room to the candidate or party committee for candidate-related or party-related activity, provided that the room is used on a regular basis by members of the community for noncommercial purposes and the room is available for use by members of the community without regard to political affiliation. The individual's payment of a nominal fee paid to use the room is not a contribution or expenditure. 52 U.S.C. §30101(8)(B)(ii) (formerly 2 U.S.C. §431(8)(B)(ii)); 11 C.F.R. §§100.76 and 100.136. 5. A corporation can allow a candidate to use its list of customers, clients, vendors, and employees who are not in its restricted class to solicit contributions as long as the corporation receives advance payment for the list's fair market value. 11 C.F.R. §114.2(f)(2)(i)(C); <u>see also</u> FEC	• whether the activity is an ongoing activity of the organization or whether it is conducted only for the candidate. 3. In IRS Fact Sheet 2006-17 (Feb. 2006), the IRS provided the following example of the use of organization facilities: <u>Example 17</u>: Museum K is a section 501(c)(3) organization. It owns an historic building that has a large hall suitable for hosting dinners and receptions. For several years, Museum K has made the hall available for rent to members of the public. Standard fees are set for renting the hall based on the number of people in attendance, and a number of different organizations have rented the hall. Museum K rents the hall on a first come, first served basis. Candidate P rents Museum K's social hall for a fundraising dinner. Candidate P's campaign pays the standard fee for the dinner. Museum K is not involved in political campaign intervention as a result of renting the hall to Candidate P for use as the site of a campaign fundraising dinner. The IRS also used this example in Rev. Rul. 2007-41, Situation 17, 2007-1 C.B. 1421, 1425, and a similar example in IRS Publication 1828, Tax Guide for Churches and Religious Organizations, Example 1, at 16 (Aug. 2015). 4. "An IRC 501(c)(3) organization that operates a noncommercial broadcast station is not required to permit

A GUIDE TO ELECTION YEAR ACTIVITIES OF SECTION 501(C)(3) AND 501(C)(4) ORGANIZATIONS

ACTIVITY	FEDERAL ELECTION CAMPAIGN ACT OF 1971, AS AMENDED ("FECA")	INTERNAL REVENUE CODE OF 1986, AS AMENDED ("I.R.C.")
CANDIDATE USE OF FACILITIES AND OTHER ASSETS		
	Advisory Opinion 2010-30 (nonprofit Section 501(c)(4) membership organization can rent its e-mail subscriber list for its usual and normal charge to federal candidates and political committees; no coordinated expenditure or communication occurs). 6. The national committee of a political party (the Libertarian Party) can lease its self-developed mailing list to a Section 501(c)(3) or 501(c)(4) organization without the organization making a contribution to the party as long as: (a) the list, or the leased portion of the list, has an ascertainable fair market value; (b) the list is leased at the usual and normal charge in a bona fide, arm's length transaction, and is used in a commercially reasonable manner consistent with the arm's length agreement; and (c) the lessee of the list, within a reasonable period of time, actually uses the names in the ordinary course of its business and in a manner consistent with the fair market price paid. In addition, the national committee can exchange its mailing lists, or portions of the lists, for lists of equal value with a Section 501(c)(3) or 501(c)(4) organization. When exchanges of equal value occur, no contribution occurs. FEC Advisory Opinion 2002-14. See also Ready for Ron v. Federal Election Commission, 2023 WL 3539633, at *1 (D.D.C. May 17, 2023) (petition with e-mail addresses and phone numbers of signatories was a contact list and in-kind contribution; "[I]t makes no difference whether Governor DeSantis has declared his	the use of its facilities by any legally qualified candidate for any public office. However, if an organization permits a legally qualified candidate for any public office to use a broadcasting station, it must give all other legally qualified candidates for that office an equal opportunity to use the broadcasting station. For these purposes, use of the broadcasting station does not include the '[a]ppearance by a legally qualified candidate on any -- (1) bona fide newscast, (2) bona fide news interview, (3) bona fide news documentary (if the appearance of the candidate is incidental to the presentation of the subject or subjects covered by the news documentary), or (4) on-the-spot coverage of bona fide news events (including but not limited to political conventions and activities incidental thereto).' 47 U.S.C. §315(a). In applying these rules, a broadcasting station is not required to invite all legally qualified candidates for a particular office to appear on the same program." 2002 CPE Text, at 377. 5. Rents for facilities should qualify for the exemption from unrelated business taxable income for rents as long as the Section 501(c)(3) organization does not provide ancillary services. I.R.C. §512(b)(3). 6. (a) A Section 501(c)(3) organization can sell, lease, or license its membership list, mailing list, or contributor list to all candidates and political organizations on the same terms, and must charge fair market rates to the candidate or political organization. The organization should

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CANDIDATE USE OF FACILITIES AND OTHER ASSETS		
	candidacy, whether he has invoked the regulatory exception for 'testing the waters,' or whether he has done neither at the point at which he accepts RFR's contact list. By accepting the list, he would necessarily commit himself to either a candidacy or testing the waters, both of which require contributors (including in-kind contributors) to comply with FECA's contribution limitations"), appeal dismissed as moot sub nom. Ready to Win v. Federal Election Commission, No. 23-5161 (D.C. Cir. March 6, 2024) (per curiam). FEC Advisory Opinion 2014-6 (publisher of book by Representative Paul Ryan did not make an in-kind contribution to Ryan's campaign committee or leadership PAC when the publisher sold the book to these committees at a standard, discounted price that the publisher, under normal industry practice, made available on equal terms to other bulk purchasers that were not political organizations or committees). 7. (a) Information copied from reports and statements required to be filed with the FEC may not be sold or used by any person for the purpose of soliciting contributions or for commercial purposes, other than using the name and address of any political committee to solicit contributions from such committee. 52 U.S.C. §30111(a)(4). Similarly, the FEC regulations provide that any information copied, or otherwise obtained, from any report or statement filed under FECA, or any copy, reproduction, or publication thereof, shall not be sold or used by any person for the purpose of soliciting	consider using a list broker to determine fair market value. T.A.M. 200044038 (Nov. 3, 2000). (b) The first sale, lease, or license should not be to a candidate or political organization. In addition, the Section 501(c)(3) organization should use ordinary and prudent methods used in the direct mail fundraising industry to prevent the overuse of its mailing list or contributor list. Id. (c) A Section 501(c)(3) organization cannot provide its lists for free or at a reduced rate to candidates, political parties, PACs, or politically active Section 501(c)(4) organizations. The transaction would be a prohibited use of a Section 501(c)(3) organization's assets for political purposes. (d) The 2002 CPE Text provides that a Section 501(c)(3) organization that sells or leases its mailing list or contributor list to certain candidates, without making it available to all other candidates on the same terms, violates the prohibition against campaign intervention. "In determining whether the mailing list is equally available to all other candidates, it must be shown that all candidates were afforded a reasonable opportunity to acquire the list. To ensure the list is equally available to all candidates, an IRC 501(c)(3) organization should inform the candidates of the availability of the list. If the organization has never previously rented its mailing list,

ACTIVITY	FEDERAL ELECTION CAMPAIGN ACT OF 1971, AS AMENDED ("FECA")	INTERNAL REVENUE CODE OF 1986, AS AMENDED ("I.R.C.")
CANDIDATE USE OF FACILITIES AND OTHER ASSETS		
	contributions or for any commercial purpose, except that the name and address of a political committee may be used to solicit contributions from the committee. 11 C.F.R. §104.15(a). (b) A political committee's use of the names of its own contributors is not within the sale or use prohibition if the contributor names were not obtained from FEC reports but were compiled by the committee on the basis of its own information. FEC Advisory Opinion 1977-66 (Title Industry PAC); see also FEC Advisory Opinion 1991-16 (Feigenbaum) (sale or use prohibition would not prohibit a political committee from selling or renting its own contribution list for use by someone else to solicit contributions, but does prohibit the use of any list to solicit contributions that is copied or otherwise obtained from disclosure reports filed under FECA). 8. (a) When a campaign traveler uses corporate aircraft for noncommercial travel, the campaign traveler must reimburse the corporation no later than seven calendar days after the date the flight began. 11 C.F.R. §100.93(c). A campaign traveler means: (i) any candidate traveling in connection with an election for federal office, or any individual traveling in connection with an election for federal office on behalf of a candidate or political committee; or (ii) any member of the news media traveling with a candidate. 11 C.F.R. §100.93(a)(3)(i).	the value assigned to the mailing list must be given extra scrutiny to ensure that the fee charged is a fair market rate." 2002 CPE Text, at 383-84. (e) A Section 501(c)(3) organization can exchange its list for a list of new names of equal value with a candidate, political party, PAC, or politically active Section 501(c)(4) organization. The other organization should also agree to pay the fair market value for the Section 501(c)(3) organization's list if the other organization does not provide the new names within a specified reasonable time. The Section 501(c)(3) organization should use a list broker to determine fair market value. (f) A Section 501(c)(3) organization can accept lists from a candidate, political party, PAC, or politically active Section 501(c)(4) organization to conduct nonpartisan activities, and not further the partisan interests of the other organization. The Section 501(c)(3) organization should not receive partisan information from the other organization, such as candidate preference identification data, lists that target specific geographical areas, or lists that identify voters who live in Democratic or Republican precincts or who support a particular candidate. (g) Similar rules apply for voter files and modeling that a Section 501(c)(3) organization develops in voter

ACTIVITY	FEDERAL ELECTION CAMPAIGN ACT OF 1971, AS AMENDED ("FECA")	INTERNAL REVENUE CODE OF 1986, AS AMENDED ("I.R.C.")
CANDIDATE USE OF FACILITIES AND OTHER ASSETS		
	(b) A Senate, presidential, or vice-presidential candidate traveling on his or her own behalf, or any person traveling on behalf of the candidate or the candidate's authorized committee, must pay the pro-rata share per campaign traveler of the normal and usual charter fare or rental charge for travel on a comparable aircraft of comparable size. The pro-rata share is calculated by dividing the normal and usual charter fare or rental charge by the number of campaign travelers on the flight that are traveling on behalf of the candidates or their authorized committees, including members of the news media, and security personnel traveling with a candidate. No portion of the normal and usual charter fare or rental charge can be attributed to any campaign travelers that are not traveling on behalf of the candidates or their authorized committees, or any other passengers, except as permitted under 11 C.F.R. §100.93(b)(3) with respect to reimbursements by news media and federal and state governments providing security personnel. 11 C.F.R. §100.93(c)(1). (c) A campaign traveler who is a candidate for election to the House of Representatives, or a person traveling on behalf of any such candidate or any authorized committee or leadership PAC of such candidate, is prohibited from noncommercial travel on behalf of any such candidate or any authorized committee or leadership PAC of such candidate. 11 C.F.R. §100.93(c)(2).	registration and get-out-the-vote drives and grassroots organizing. 7. If a Section 501(c)(4) organization gives its mailing list to candidates, parties, or PACs, the organization makes an in-kind contribution. In jurisdictions that prohibit corporate contributions, the Section 501(c)(4) organization must sell or lease the list for fair market value. The Section 501(c)(4) organization can provide its mailing list only to the persons and entities that it supports, and does not have to provide it to everyone that requests it. 8. In IRS Fact Sheet 2006-17 (Feb. 2006), the IRS provided the following example of the use of mailing lists: Example 18: Theater L is a section 501(c)(3) organization. It maintains a mailing list of all of its subscribers and contributors. Theater L has never rented its mailing list to a third-party. Theater L is approached by the campaign committee of Candidate Q, who supports increased funding for the arts. Candidate Q's campaign committee offers to rent Theater L's mailing list for a fee that is comparable to fees charged by other similar organizations. Theater L rents its mailing list to Candidate Q's campaign committee. Theater L declines similar requests from campaign committees of other candidates. Theater L has intervened in a political campaign. The IRS also used this example in Rev. Rul.

ACTIVITY	FEDERAL ELECTION CAMPAIGN ACT OF 1971, AS AMENDED ("FECA")	INTERNAL REVENUE CODE OF 1986, AS AMENDED ("I.R.C.")
CANDIDATE USE OF FACILITIES AND OTHER ASSETS		
	(d) When a candidate's authorized committee pays for a flight under subparagraph (b), no payment is required from other campaign travelers on that flight. Otherwise a campaign traveler not covered by subparagraphs (b) and (c), including persons traveling on behalf a political party committee, separate segregated fund, nonconnected political committee, or a leadership PAC, must pay the service provider no less than the following for each leg of the trip: (i) In the case of travel between cities served by regularly scheduled first-class commercial airline service, the lowest unrestricted and nondiscounted first-class airfare; (ii) In the case of travel between a city served by regularly scheduled coach commercial airline service, but not regularly scheduled first-class commercial airline service, and a city served by regularly scheduled coach commercial airline service (with or without first-class commercial airline service), the lowest unrestricted and nondiscounted coach airfare; or (iii) In the case of travel to or from a city not served by regularly scheduled commercial airline service, the normal and usual charter fare or rental charge for a comparable commercial aircraft of sufficient size to accommodate all campaign travelers, and security personnel, if applicable. 11 C.F.R. §100.93(c)(3).	2007-41, Situation 18, 2007-1 C.B. 1421, 1425, and a similar example in IRS Publication 1828, Tax Guide for Churches and Religious Organizations, Example 2, at 16 (Aug. 2015). 9. (a) The sale, exchange, or lease of mailing lists among Section 501(c)(3) organizations does not produce unrelated business taxable income. I.R.C. §513(h)(1)(B). Income from mailing list licenses to non-Section 501(c)(3) organizations should qualify for the royalty exemption from unrelated business taxable income. Income from an arrangement structured as other than a license may trigger unrelated business taxable income. I.R.C. §512(b)(2); Oregon State University Alumni Ass'n v. Commissioner, 193 F.3d 1098 (9th Cir. 1999); Sierra Club, Inc. v. Commissioner, 86 F.3d 1526 (9th Cir. 1996) (excludable royalties involve the payment for the use of a property right, but a payment for more than de minimis services performed by the property owner as part of that use is not excludable royalty income); Common Cause v. Commissioner, 112 T.C. 332 (1999) (payments received by a tax-exempt organization from the rental of its mailing list to third-parties are royalties when the organization does not provide ancillary services to the payor); Planned Parenthood Federation of America, Inc. v. Commissioner, 77 T.C.M. 2227 (1999). See generally Diane L. Fahey, "Taxing Nonprofits Out of Business," 62 Washington and Lee Law Review 547

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	(e) If a campaign traveler uses any means of transportation other than an aircraft, including an automobile, train, or boat, the campaign traveler, or the political committee on whose behalf the travel is conducted, must pay the service provider within thirty calendar days after the date of receipt of the invoice for the travel, but not later than sixty calendar days after the date the travel began, at the normal and usual fare or rental charge for a comparable commercial conveyance of sufficient size to accommodate all campaign travelers, including members of the news media traveling with a candidate, and security personnel, if applicable. 11 C.F.R. §100.93(d). 9. In FEC Advisory Opinion 2006-1, the FEC addressed whether a publisher's sales of a book at discounted prices were in-kind contributions to a PAC. A nonconnected multicandidate PAC would purchase a sizeable number of copies of a novel written by Senator Barbara Boxer at a price that was less than the publisher's suggested retail price, but was the standard price for other large purchasers. Senator Boxer would sign each book, and the PAC would offer the book to any person who raises at least $100 for the PAC within a certain time period. The purchase of the books at a discount was not an in-kind contribution by the publisher since the discounted items were made available in the ordinary course of business and on the same terms and conditions offered to the vendor's other customers that were not political committees. See also FEC Advisory Opinion	(Spring 2005); Terri Lynn, "The Taxation of Cause-Related Marketing," 85 Chicago-Kent Law Review 883 (2010); Kevin M. Yamamoto, "Taxing Income From Mailing List and Affinity Card Arrangements: A Proposal," 38 San Diego Law Review 221 (Winter 2001). (b) The IRS National Office has directed EO Area Managers that "further litigation in cases with facts similar to those decided in favor of the taxpayer should not be pursued." Memorandum from the IRS National Office to EO Area Managers (Dec. 16, 1999), reprinted in 28 Exempt Organization Tax Review 141 (2000). 10. A Section 501(c)(3) organization cannot loan money to or provide loan guarantees for a candidate, political party, or PAC. This prohibition applies regardless of whether the loan bears a market interest rate. T.A.M. 9812001 (Aug. 21, 1996).

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	2014-6 (publisher of book by Representative Paul Ryan did not make an in-kind contribution to Ryan's campaign committee or leadership PAC on the sale of the book to these committees at a standard, discounted price that the publisher, under normal industry practice, made available on equal terms to other bulk purchasers that were not political organizations or committees). 10. (a) In FEC Advisory Opinion 2008-18, the FEC addressed whether a prohibited corporate contribution resulted from payments by a provider of a prescription drug discount program to federal political party committees for the provision of prescription drug discount cards to their supporters and other interested persons. (b) Agelity, Inc. maintained a prescription drug discount program, and recruited organizations to create, promote, and distribute prescription drug discount cards. Agelity maintained a contractual relationship with pharmacy networks to honor the cards. MAB, a limited liability company, partnered with Agelity by making the Agelity prescription drug discount program available to prospective sponsors and by managing the program. (c) MAB proposed to offer the program to Democratic and Republican political party committees. MAB and Agelity executed contracts with the State committees of the Republican and Democratic parties in West Virginia. These contracts contained the same terms and conditions as their	

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	contracts with nonpolitical entities, and would be signed by MAB, Agelity and the party committee sponsors. As delineated in the contract signed by the West Virginia Democratic Party (the "Contract"), MAB in partnership with Agelity would provide the Agelity Prescription Drug Discount Program to the party committee sponsor, and in turn the party committee sponsor would offer the Agelity program to supporters or other interested persons. The party committee sponsor would agree to manufacture the cards, and to pay for their promotion and distribution. (d) Cardholders would be able to use the cards that party committee sponsors offered without charge to obtain discounts on drug purchases at pharmacies in participating networks. The participating pharmacy networks would pay Agelity a fee, the amount of which was negotiated between Agelity and the pharmacy network, for each "transaction," or each purchase of a single medication with the card. The pharmacies would use group numbers on the cards to pay the specified transaction fees to Agelity. Agelity would pay a transaction fee of $.70 for each purchase to MAB, this fee being derived from the fee that the pharmacy networks would pay to Agelity. MAB in turn would pay a transaction fee, out of what it receives from Agelity, of $.25 to the party committee sponsor. Thus, the Contract contemplated that the payments to the party committee sponsor would flow from Agelity's revenues. MAB's profit would be the difference between the fee it received and the fee it	

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	disbursed, while the party committee sponsors would earn a $.25 fee per transaction. (e) The FEC distinguished between two types of business affinity arrangements that produced different results under FECA. In the first type of arrangement, the corporation pays a fee to a political committee in exchange for the right to use a political committee's asset, such as a contributor list, in conjunction with the corporation's marketing efforts, or the corporation pays a fee to a political committee to perform the service of marketing the product to the committee's supporters. The FEC has not regarded these types of arrangements as commercial transactions, but rather as fundraising devices for political committees. In these situations, the FEC concluded that the fact that the corporation receives something of value from the political committee in exchange for payments that purported to be the proceeds of a commercial sale did not change the essential nature of the transaction as a contribution. The payments received by the political committees were treated as contributions subject to the prohibitions of 52 U.S.C. §30118 (formerly 2 U.S.C. §441b). See, e.g., FEC Advisory Opinions 1992-40 (Leading Edge Communications), 1988-12 (Empire of America Federal Savings Bank), and 1979-17 (RNC). (f) In the second type of arrangement, a political committee pays a corporation a commercially reasonable fee in exchange for the corporation's efforts to market services that	

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	provide an opportunity for a purchaser of the services to contribute to the political committee. In these situations, the FEC concluded that as long as: (i) the corporation and political committee enter into a commercially reasonable transaction, and (ii) the amounts contributed to political committees via rebates or rewards are from individual customers' funds and not from the corporation's funds, then the arrangements are *bona fide* commercial transactions that do not result in prohibited corporate contributions under 52 U.S.C. §30118 (formerly 2 U.S.C. 441b). See, e.g., FEC Advisory Opinions 2006-34 (Working Assets), 2003-16 (Providian National Bank), and 2002-7 (Careau & Co.). See also FEC Advisory Opinion 2014-9 (corporation's development and marketing of an affinity credit card product for national party committees and other federal political committees did not result in an impermissible corporate contribution; corporation would send an application package to individuals on a committee's mailing list, informing each individual that he or she had prequalified for a credit card that would offer monthly rebates on the cardholder's charges; application would explain that the cardholder could choose to receive those rebates personally in cash, or to have the bank forward the rebates to the committee affinity partner as a contribution, and that the cardholder could change this designation at any time; after issuance of the credit card, corporation would provide the committee with certain data and statistics regarding cardholders and usage,	

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	but would not receive, handle, or process the rebates or contributions; rather, the partner banks would pay the rebates to the cardholder as cash, or forward them as contributions to the committee; partner banks would forward contributions to the committee at the same time they would have distributed any rebates to the cardholder; corporation marketed similar services to other organizations and businesses that were not political committees; corporation received compensation of a per-cardholder fee, a monthly fee, and use of the committee's mailing list, trademarks, and branding in marketing the affinity program; since corporation qualified as a commercial vendor under 11 C.F.R. §114.2(f) and its compensation reflected the usual and normal charge for services, the corporation neither made a contribution nor facilitated the making of a contribution; since the rebates were the exclusive property of the cardholders, and neither the corporation nor the issuing bank exercised any control over the disposition of the rebates, no prohibited contribution occurred). (g) In the impermissible arrangements, a portion of the revenues charged and collected by a corporation were transmitted to a political committee. In the permissible arrangements, corporate funds were not paid to political committees. Accordingly, the arrangement involving MAB and Agelity was impermissible because the transaction fees payable to the political committees were from Agelity's corporate funds, and not from individual funds.	

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	Agelity would pay MAB's transaction fee out of the revenues it would collect from the pharmacy networks, and MAB in turn would pay the party committee sponsor's transaction fee out of the fee it would collect from Agelity. While MAB was not a corporation or treated as a corporation, all the funds it provided the party committee sponsor consisted of general treasury funds from Agelity. Therefore, the political party committees participating in the program would receive corporate contributions from Agelity. (h) In addition, MAB's proposal did not involve an isolated transaction, but an ongoing enterprise. Because a political party needed only to market and distribute a card to a supporter once, but would earn a transaction fee every time that a person used the card in the indefinite future, a political party could receive payments that substantially exceeded the value of the promotional and distribution services it performed.	

A GUIDE TO ELECTION YEAR ACTIVITIES OF SECTION 501(C)(3) AND 501(C)(4) ORGANIZATIONS

ACTIVITY	FEDERAL ELECTION CAMPAIGN ACT OF 1971, AS AMENDED ("FECA")	INTERNAL REVENUE CODE OF 1986, AS AMENDED ("I.R.C.")
WEBSITE ACTIVITIES		
	1. (a) The Ohio State Medical Association ("OSMA"), a Section 501(c)(6) tax-exempt membership organization under 11 C.F.R. §114.1(e)(1), made a prohibited in-kind corporate contribution when it posted to the public area of its website links to a video recording of campaign speeches that two candidates for United States Senate from Ohio delivered to OSMA's members at its annual meeting. MUR 6552 (Ohio State Medical Association). The costs associated with OSMA making the speeches available to a broader audience constituted something of value to the candidates, which was an impermissible contribution. 52 U.S.C. §§30101(8)(A)(i) and (9)(A)(i) and 30118(a)-(b) (formerly 2 U.S.C. §§431(8)(A)(i) and (9)(A)(i) and 441b(a)-(b)); 11 C.F.R. §114.2(a). (b) When a Section 501(c)(4) organization endorses a candidate on its website, the costs paid by the organization are an exempt function expenditure subject to the tax regime of Code Section 527(f). See discussion of Code Section 527(f) in Paragraphs 28 to 30 of the I.R.C. column for "Regulatory Provisions on Contributions, Expenditures, and Electioneering." (c) When a Section 501(c)(4) organization endorses a candidate on a Webpage access to which is limited to its members, the organization can coordinate the material on the Webpage with candidates. 52 U.S.C. §§30101(8)(B)(vi) and (9)(B)(iii) and 30118(2)(A) (formerly 2 U.S.C. §§431(8)(B)(vi) and (9)(B)(iii) and 441b(2)(A)); 11 C.F.R.	1. When a Section 501(c)(3) organization "posts something on its website that favors or opposes a candidate for public office, the organization will be treated the same as if it distributed printed material, oral statements, or broadcasts that favored or opposed a candidate." Rev. Rul. 2007-41, 2007-1 C.B. 1421, 1426; IRS Publication 1828, Tax Guide for Churches and Religious Organizations, at 17 (Aug. 2015). 2. A Section 501(c)(3) organization may have engaged in political activity if one part of its website takes a position on an issue, and on a different part of its website the organization provides neutral, unbiased information regarding the candidates' positions on that issue. Memorandum from Lois G. Lerner, Director, IRS Exempt Organizations Division, at 3 (April 17, 2008) (available at http://www.irs.gov/pub/irs-tege/2008_paci_program_letter.pdf). This position is inconsistent with Rev. Rul. 78-248, 1978-1 C.B. 154, which allows Section 501(c)(3) organizations to publish voter guides that reprint candidates' responses to a questionnaire covering a broad range of issues in a manner that does not favor any candidate. 3. "An organization has control over whether it establishes a link to another site. When an organization establishes a link to another web site, the organization is responsible for the consequences of establishing and maintaining that link, even if the organization does not have control over

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	§§100.134(a) and (e), 114.1(j), and 114.3(a). Access to a Webpage is limited to members if it is protected by a password given only to members, or if the organization provides a link to the Webpage in an e-mail sent only to members and the Webpage is not otherwise accessible from public portions of the organization's website. FEC Advisory Opinion 2000-7 and FEC Advisory Opinion 1997-16. 2. An on-line Internet electronic bulletin board service provider, CompuServe, cannot provide free service to a candidate when it normally changes a fee. FEC Advisory Opinion 1996-2. 3. (a) In FEC Advisory Opinion 1999-25, the FEC found that the League of Women Voters, and the Center for Governmental Studies, two Section 501(c)(3) organizations, did not make a prohibited corporate expenditure through operation of a website. Rather, the website was a nonpartisan activity designed to encourage individuals to vote or register to vote under 52 U.S.C. §30101(9)(B)(ii) (formerly 2 U.S.C. §431(9)(B)(ii)). The website invited all ballot-qualified candidates in an election, other than a presidential general election, to participate in the website. Using an ID and password, a candidate can enter the website and write on any issue he or she chooses, or respond to questions from other candidates and members of the public. A candidate's position on an issue is automatically entered into a "Candidate Grid," and the position is then e-mailed to his or her opponents, who can then submit statements. In	the content of the linked site. Because the linked content may change over time, an organization may reduce the risk of political campaign intervention by monitoring the linked content and adjusting the links accordingly." Rev. Rul. 2007-41, 2007-1 C.B. 1421, 1426; IRS Publication 1828, Tax Guide for Churches and Religious Organizations, at 17 (Aug. 2015). 4. (a) A Section 501(c)(3) organization's website can link to the websites of all candidates for a public office as long as the links are presented on a consistent, neutral basis for each candidate. Rev. Rul. 2007-41, Situation 19, 2007-1 C.B. 1421, 1426; PLR 201712015 (IRS denied Section 501(c)(3) status to organization when it held events in which predominantly H candidates were invited to speak to the organization's members; the organization's website linked to an event for a current H Senator and H Senatorial candidate, and there were no links to other candidates' websites or events; as part of organization's GOTV effort, it encouraged its members to participate in local G GOTV efforts, be they run by the County H, P, N, Q or any other valid political group its members were comfortable supporting; organization's meeting minutes discussed ways to vastly increase the percentage of R and H who voted in S; volunteers would try to find twenty people in each precinct to get out the vote and pass out e-mail contacts with the precinct of each member listed; organization cited these as overly optimistic, and that voter turnout of these two populations were historically

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	addition, each candidate provides his or her biography, information on how to contact the campaign, and individual and organizational endorsements. The website also provides an e-mail form and the candidates' addresses for viewers to communicate directly with campaigns. Campaigns may post hyperlinks to their websites. Links are also provided to sites with reports of official campaign contribution data for candidates and ballot measures. (b) Whether an activity comes within the nonpartisan activity exception to the definition of expenditure turns on the following criteria: "the standard for inviting candidates and degree of participation by each candidate; the audience targeted; the selection of materials that come from sources other than campaigns, such as media entities; the degree of coordination between DNet [the website] and the campaigns; and the communications of DNet itself." (c) The FEC found that the website activities were nonpartisan because: (i) all ballot qualified candidates for an election, other than a presidential general election, were invited to participate; (ii) the space allocations and the positioning of candidates on the Candidate Grid were based on objective criteria; (iii) no effort was made to determine the political party or candidate preference of the viewers, citing 11 C.F.R. §100.8(b)(3) (now codified at 11 C.F.R. §100.133); and (iv) DNet did not score or rate the candidates, or make any statements expressly advocating the	high); IRS Publication 1828, Tax Guide for Churches and Religious Organizations, Example 3, at 18 (Aug. 2015). (b) Since a Section 501(c)(3) organization can engage in lobbying and educational activities, the organization can take the position that its website can link to a public official's government website in furtherance of these activities. When a public official is also a candidate, the organization should state that the link is provided because of the person's position as a public official. (c) A link from a candidate's website to a Section 501(c)(3) organization's website should not result in impermissible campaign intervention. Since the Section 501(c)(3) organization does not control the candidate, the candidate's action should not be attributed to the Section 501(c)(3) organization. 5.A Section 501(c)(3) organization's website can link to the websites of a broad range of Section 527 organizations, including PACs, that provide candidate profiles and voting histories, but cannot link to the websites of a select group of Section 527 organizations and PACs. 6. (a) A Section 501(c)(3) organization's website can link to an affiliated Section 501(c)(4) organization's homepage that does not contain prohibited campaign intervention. The affiliated Section 501(c)(4) organization's homepage can link to political activity in another section of its

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WEBSITE ACTIVITIES		
	election or defeat of any clearly identified candidate, or the candidates of any political party. (d) Shortly after the FEC issued its advisory opinion, DNet was acquired by Grassroots.com, a for-profit nonpartisan media and technology corporation. In MUR 4998 (Grassroots Enterprise, Inc.), the FEC found that the acquisition did not warrant any change to its advisory opinion because the critical factor was not the nonprofit or for-profit status of DNet's sponsor, but that the website activities were nonpartisan. (e) Under Citizens United, corporations are free to make independent expenditures of a partisan nature. The advisory opinion is probably still good authority as to whether a corporation makes or does not make an expenditure subject to FECA's reporting requirements. 4. A limited liability company can maintain a website that provides information on federal candidates on a nonpartisan basis, and contains hyperlinks to national party committees' websites. FEC Advisory Opinion 1999-24. This opinion extends the principles of FEC Advisory Opinion 1999-25 (discussed in Paragraph 3 above) to for-profit companies. Under Citizens United, corporations are free to make independent expenditures of a partisan nature. The advisory opinion is probably still good authority for whether a corporation makes an expenditure subject to FECA's reporting requirements.	website, and can link to the Section 501(c)(3) organization's homepage. (b) Before the 2008 election, the IRS stated in a memorandum that "at this time" it would not pursue enforcement cases in which a Section 501(c)(3) organization linked to the home page of an affiliated Section 501(c)(4) organization. Memorandum from Lois G. Lerner, Director, IRS Exempt Organizations Division, at 3 (April 17, 2008) (available at http://www.irs.gov/pub/irs-tege/2008_paci_program_letter.pdf). It is important to note that the memorandum does not apply to links to other pages of the website of the Section 501(c)(4) organization, and does not address whether the home page can contain candidate endorsements or other political activity. (c) The IRS found prohibited campaign intervention in the following situation. A Section 501(c)(3) organization's website included the web pages of an affiliated Section 501(c)(4) organization. The web pages of the affiliated Section 501(c)(4) organization contained candidate questionnaires and endorsements of candidates for public office. The Section 501(c)(3) organization's banner, logo, site links, and disclaimer and copyright notices were placed on every page on the Section 501(c)(3) organization's website, including the pages from the website of the Section 501(c)(4) organization. As a result,

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	5. A Section 501(c)(3) organization can use pop-up political ads in conducting a survey on the opinions of young voters on elections, and assessing the impact of the ads on the opinions. FEC Advisory Opinion 2000-16. 6. The Secretary of State of Minnesota can use its official website to post hyperlinks to the websites of all ballot qualified candidates for public office. FEC Advisory Opinion 1999-7. 7. A Section 501(c)(4) nonprofit membership organization can post candidate-prepared position papers that do not contain express advocacy on a section of its website accessible only by its members. Since posting the position papers constitutes a permissible membership communication, any costs associated with posting the papers would not be contributions or expenditures under 52 U.S.C. §§30101(9)(B)(iii) and 30118(b)(2)(A) (formerly 2 U.S.C. §§431(9)(B)(iii) and 441b(b)(2)(A)), and 11 C.F.R. §§100.134(a) and 114.1(a)(2)(x). FEC Advisory Opinion 2011-4. 8. (a) In FEC Advisory Opinion 2004-6, the FEC addressed whether a provider of an online platform to arrange candidate or political party events made a contribution or expenditure. Meetup, Inc. ("Meetup") offered a commercial, Web-based platform for arranging local gatherings on more than 1,840 topics suggested by users. Meetup listed the suggested topics for the local gatherings	the Section 501(c)(3) organization violated the prohibition against campaign intervention. The fact that the Section 501(c)(4) organization reimbursed the Section 501(c)(3) organization for the proportionate cost of the Section 501(c)(3) organization's website that contained its material did not change the result. T.A.M. 200908050 (Feb. 20, 2009). 7. (a) When a Section 501(c)(3) organization and an affiliated Section 501(c)(4) organization maintain a joint website, the material of the Section 501(c)(4) organization and any connected PAC containing prohibited campaign activity should be kept in a separate section accessible only from the Section 501(c)(4) areas. The Section 501(c)(3) areas should not contain links to pages that contain prohibited campaign activity, or a navigation bar that contains these links. (b) When a Section 501(c)(3) organization and an affiliated Section 501(c)(4) organization maintain a joint website, the website should distinguish between the content of the Section 501(c)(3) organization, and the content of the Section 501(c)(4) organization. Furthermore, the Section 501(c)(3) organization's address, banner, disclaimer, logo, site links, and other identifying information should not appear in any of the Section 501(c)(4) areas. Finally, each organization should pay its share of the costs of the joint website.

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	on Meetup.com, and its Web-based software enabled interested persons to register to meet up with others at a physical location to discuss the specified topic. Users typically hosted the "meetups" and bore all the costs associated with each event. Meetup did not supervise or arrange the events, other than to provide a platform for its users. There was no charge for Meetup's "basic services," which consisted of listing a topic on Meetup.com and enabling a user to sign-up to attend a meetup. (b) Meetup derived its revenue from two sources: (i) from establishments that paid to be listed as possible event venues; and (ii) from payment for premium services to individuals and organizations. For various levels of fees, Meetup permitted entities to "sponsor" meetups on particular subjects. Meetup also listed several meetups at a given time in its "Featured Meetups" section. As a condition of sponsorship, each sponsored meetup was listed in this prominent "Featured Meetups" section for a fixed period of time, depending on the sponsorship's fee level. In exchange for a separate fee, Meetup permitted sponsors to control the text in the section of the Meetup page where the description of a meetup was located (the "What" section). The sponsors were limited to twenty words and two hyperlinks in this space. Also for a fee, sponsors could control the text that appeared in e-mails sent to members of the sponsored meetup. This text was limited to 500 characters and two links per e-mail, and each member received three to five e-mails per month. Additionally, for a	(c) If the joint website is owned by the Section 501(c)(3) organization, and the Section 501(c)(4) organization does not engage in political activity, the Section 501(c)(4) organization can freely post material on the website. (d) If the joint website is owned by the Section 501(c)(4) organization, the Section 501(c)(4) organization engages in political activity on the website, and the Section 501(c)(3) organization pays to post material on the website, it is unresolved whether the Section 501(c)(3) organization has engaged in political activity. (e) If the joint website is owned by the Section 501(c)(3) organization, and the Section 501(c)(4) organization conducts political activity on the website, the Section 501(c)(3) organization engages in prohibited political activity by permitting its assets to be used for political activity. (f) When the Section 501(c)(4) organization conducts substantial campaign activity on its website, the most prudent course for the Section 501(c)(3) and affiliated Section 501(c)(4) organizations is to have separate websites, each with a link to the other's homepage. The Section 501(c)(4) organization's homepage should not contain any prohibited campaign activity, but can provide a link to it. In addition, each organization must pay the costs of its website. Cf. Treas. Reg. §1.513-4(f), Examples 11 and 12 (a hyperlink from a tax-exempt

ACTIVITY	FEDERAL ELECTION CAMPAIGN ACT OF 1971, AS AMENDED ("FECA")	INTERNAL REVENUE CODE OF 1986, AS AMENDED ("I.R.C.")
WEBSITE ACTIVITIES		
	fee, sponsors could choose to set the top agenda item on their Meetup Web page, which was a suggested discussion topic for the actual meetup. Meetup also provided the sponsor with the names and other data of users who indicated that they would attend the sponsored meetup and grant Meetup permission to share their information. (c) Some of the Meetup topics included the names of candidates for federal office and federal political committees. A cursory review of Meetup's website showed that the federal candidate topics comprise only a small percentage of the topic listings. Meetup did not favor or disadvantage political topics in relation to nonpolitical topics. Meetup's communications department regularly posted "Featured Meetups" about interesting or timely topics, and Meetup would only feature candidate or political committee meetup events if that candidate or committee was a paid sponsor. (d) Meetup would charge different fees to different classes of sponsors. For example, all U.S. Senate candidates would be charged one set of fees while all candidates for the U.S. House of Representatives would pay a smaller fee for the same type of services. Meetup's overall fee structure was based on a fixed set of criteria consisting of the volume of users, the geographic reach of the meetup, and how much the services would burden Meetup's resources. Thus, Meetup would provide the same services for the same fees and on the same terms and conditions to all individuals or	organization's website to a sponsor's website is a tax-free acknowledgement of the sponsor; when the tax-exempt organization endorses the sponsor's product or service on the sponsor's website, the hyperlink is an advertisement that can trigger unrelated business taxable income to the tax-exempt organization). 8. In IRS Fact Sheet 2006-17 (Feb. 2006), the IRS provides the following examples of website activities: Example 19: M, a section 501(c)(3) organization, maintains a web site and posts an unbiased, nonpartisan voter guide that is prepared consistent with the principles discussed in [IRS Fact Sheet 2006-17]. For each candidate covered in the voter guide, M includes a link to that candidate's official campaign web site. The links to the candidate web sites are presented on a consistent neutral basis for each candidate, with text saying "For more information on Candidate X, you may consult [URL]." M has not intervened in a political campaign because the links are provided for the exempt purpose of educating voters and are presented in a neutral, unbiased manner that includes all candidates for a particular office. The IRS also used this example in Rev. Rul. 2007-41, Situation 19, 2007-1 C.B. 1421, 1426, but in the first bracketed language the IRS did not refer to IRS Fact Sheet 2006-17, but to Rev. Rul. 78-248. The IRS used a similar example in IRS Publication 1828, Tax Guide for

ACTIVITY	FEDERAL ELECTION CAMPAIGN ACT OF 1971, AS AMENDED ("FECA")	INTERNAL REVENUE CODE OF 1986, AS AMENDED ("I.R.C.")
WEBSITE ACTIVITIES		
	entities who were similarly situated in accordance with Meetup's fixed criteria, regardless of whether the entities were federal candidates, political committees, businesses, or other entities in the general public. (e) Meetup would not make a contribution or expenditure under FECA solely by providing basic services without charge to federal candidates in the ordinary course of business on the same terms and conditions on which they were offered to all members of the general public. (f) Meetup would not make a contribution or expenditure under FECA solely by providing federal candidates and political committees with the same fixed premium services as provided to any similarly situated member of the general public, so long as it did so in the ordinary course of business for the usual and normal charge. This charge had to be set in accordance with the fixed set of criteria and had to be applied equally between the various classes of federal candidates (i.e., presidential candidates, U.S. Senate candidates, and House candidates) and other businesses or members of the general public who were similarly situated with respect to the respective classes of candidates and political committees. Finally, federal candidates and political committees had to timely pay for each premium service so that Meetup did not extend credit to a candidate or candidate's authorized committee outside the ordinary course of its business. See 11 C.F.R. §§100.55, 116.3, and 116.4.	Churches and Religious Organizations, Example 3, at 18 (Aug. 2015). Example 20: Hospital N, a section 501(c)(3) organization, maintains a web site that includes such information as medical staff listings, directions to Hospital N, and descriptions of its specialty health programs, major research projects, and other community outreach programs. On one page of the web site, Hospital N describes its treatment program for a particular disease. At the end of the page, it includes a section of links to other web sites entitled "More Information." These links include links to other hospitals that have treatment programs for the particular disease, research organizations seeking cures for the disease, and articles about treatment programs. This section includes a link to an article on the web site of O, a major national newspaper, praising Hospital N's treatment program for the disease. The page containing the article on O's web site contains no reference to any candidate or election and has no direct links to candidate or election information. Elsewhere on O's web site, there is a page displaying editorials that O has published. Several of the editorials endorse candidates in an election that has not yet occurred. Hospital N has not intervened in a political campaign by maintaining the link to the article on O's web site because the link is provided for the exempt purpose of educating the public about Hospital N's programs and neither the context for the link, nor the relationship between Hospital N and O,

ACTIVITY	FEDERAL ELECTION CAMPAIGN ACT OF 1971, AS AMENDED ("FECA")	INTERNAL REVENUE CODE OF 1986, AS AMENDED ("I.R.C.")
WEBSITE ACTIVITIES		
	(g) The conclusion in subparagraph (f) also applied to federal candidate and political committee meetups in the list of "Featured Meetups." Because federal candidates and political committee meetups would only be featured in accordance with the fixed sponsorship fee arrangement, meaning Meetup would never exercise its discretion in featuring a candidate or political committee meetup, no contribution or expenditure would result solely from Meetup's featuring of a sponsoring candidate's or political committee's meetup event. FEC Advisory Opinion 2004-6. See also FEC Advisory Opinion 2019-18 (FEC opined that activities of IDF, a for-profit corporation, in operating and advertising for an online political discussion forum, were not expenditures, contributions, or electioneering communications; IDF did not take a public position on any political party, candidate, or issue, and all content was posted by users; IDF was not affiliated with any political party, candidate, or political committee, nor did it solicit or make contributions; its business model was to buy advertising for a forum, provide the forum as a communications platform for users, and then sell advertising on the forum to generate revenue; IDF's ads may reference candidates, parties, current events, and political issues, but did not mention elections, voting, the dates of elections, and did not include calls to action involving voting or elections).	nor the arrangement of the links going from Hospital N's web site to the endorsement on O's web site indicate that Hospital N was favoring or opposing any candidate. The IRS also used this example in Rev. Rul. 2007-41, Situation 20, 2007-1 C.B. 1421, 1426, and a similar example in IRS Publication 1828, Tax Guide for Churches and Religious Organizations, Example 2, at 17 (Aug. 2015). Example 21: Church P, a section 501(c)(3) organization, maintains a web site that includes such information as biographies of its ministers, times of services, details of community outreach programs, and activities of members of its congregation. B, a member of the congregation of Church P, is running for a seat on the town council. Shortly before the election, Church P posts the following message on its web site, "Lend your support to B, your fellow parishioner, in Tuesday's election for town council." Church P has intervened in a political campaign on behalf of B. The IRS also used this example in Rev. Rul. 2007-41, Situation 21, 2007-1 C.B. 1421, 1426, and IRS Publication 1828, Tax Guide for Churches and Religious Organizations, Example 1, at 17 (Aug. 2015). 9. (a) When a Section 501(c)(3) organization maintains a blog, the organization should comply with the following guidelines. Since staff-written postings will be attributed to the organization, the postings should not violate the prohibition on campaign intervention. Attribution will

ACTIVITY	FEDERAL ELECTION CAMPAIGN ACT OF 1971, AS AMENDED ("FECA")	INTERNAL REVENUE CODE OF 1986, AS AMENDED ("I.R.C.")
WEBSITE ACTIVITIES		
	9. (a) In FEC Advisory Opinion 2012-22, the FEC opined that skimmerhat's web-based contribution platform would not result in prohibited in-kind corporate contributions. (b) Visitors and registered members of the site ("users") will be able to use the skimmerhat platform to search for federal candidates using any of three primary search criteria: geographic location, ideological similarities, or single-issue positions. (c) Utilizing the geographic location feature, users will be presented with a map of the United States and will be able to search for federal candidates by location. As a user pinpoints the location of a race in which he or she is interested, candidates will be listed, along with their political party, as either "incumbents" or "challengers." If available, photographs of candidates will also be displayed. Also listed at this level is his or her "popularity" among members of the site. (d) Users may also search for candidates with whom they are ideologically similar by taking a "candidate matching survey," which poses a series of "yes/no" ideological questions to users. These answers are then compared to the positions of all federal candidates. A list of candidates is then displayed on the results page, ranked from highest to lowest, based upon the matching percentage with the user.	likely occur regardless of whether the staff member writes the post on his or her own time and without using organizational resources. Rev. Rul. 2007-41, Situation 4, 2007-1 C.B. 1421, 1422. (b) When a Section 501(c)(4) organization maintains a blog, staff postings do not have to comply with the prohibition on campaign intervention, but must comply with applicable federal and state campaign finance laws. Staff of an affiliated Section 501(c)(3) organization can post on the Section 501(c)(4) organization's blog as long as the two organizations have a written cost-sharing agreement under which the Section 501(c)(4) organization pays for the Section 501(c)(3) staff's time. (c) It is unresolved how the IRS will treat guest bloggers on a Section 501(c)(3) organization's blog. If the IRS treats the blog as analogous to a public forum, the posts of guest bloggers should not be attributed to the organization as long as it posts a disclaimer stating that the views expressed are only those of the guest bloggers and not the organization, that the organization does not support or oppose any candidate, and that the postings are provided as a public service in the interest of informing the public. Alternatively, the organization's sponsorship of the blog serves a tax-exempt purpose of promoting discussion of the views of candidates on important public issues. Accordingly, the posts of guest bloggers should not be attributed to the organization as long it posts the

ACTIVITY	FEDERAL ELECTION CAMPAIGN ACT OF 1971, AS AMENDED ("FECA")	INTERNAL REVENUE CODE OF 1986, AS AMENDED ("I.R.C.")
WEBSITE ACTIVITIES		
	(e) Users can search for candidates based on their position on a single issue. Using skimmerhat's list of political issues, a user can find any candidate that matches the user's position on an individual issue. (f) Once matched with federal candidates, users will be directed to a "candidate page" that is hosted on the site. Every federal candidate will have his or her own candidate page, which will include a photo, biographical information, campaign finance information, recent updates, and issue positions. Each candidate page will also feature an electronic contribution form, which provides users with a way to make contributions to the federal candidates with whom they are matched. Contributions will be limited to $2,500. (g) skimmerhat will assess an eight percent "processing and convenience" fee per transaction, which will cover credit card processing and provide a profit to the company. This eight percent convenience fee will be applied, in a separate field, in addition to the contribution amount. Once the user accepts the transaction, contributions will be routed to skimmerhat's merchant account, and the eight percent fee will be directed to the company's separate business account. No funds will be commingled in skimmerhat's corporate treasury account. All disbursements of funds will be taken directly from skimmerhat's merchant account, and not from	appropriate disclaimer. See Rev. Rul. 86-95, 1986-2 C.B. 73 (rules for candidate debates) (discussed in Paragraph 1 of the I.R.C. column for "Candidate Debates"); Rev. Rul. 74-574, 1974-2 C.B. 160 (provision by broadcasting station of Section 501(c)(3) organization of free air time to candidates permissible) (discussed in Paragraph 2 of the I.R.C. column for "Candidate Appearances and Advertisements"); Rev. Rul. 72-513, 1972-2 C.B. 246 (provision by university of facilities and faculty advisors to a student newspaper permissible) (discussed in Paragraph 8(c) of the I.R.C. column for "Regulatory Provisions on Contributions, Expenditures, and Electioneering"). (d) The IRS may not take the position that the blog is analogous to a public forum. The IRS has stated that when a Section 501(c)(3) organization "posts something on its website that favors or opposes a candidate for public office, the organization will be treated the same as if it distributed printed material, oral statements, or broadcasts that favored or opposed a candidate." Rev. Rul. 2007-41, 2007-1 C.B. 1421, 1426. Under this position, the IRS can attribute the postings of guest bloggers to the Section 501(c)(3) organization. Cf. Manhattan Community Access Corp. v. Halleck, 139 S. Ct. 1921 (2019) (private entity that operated a public access channel on a cable system did not operate a public forum for speech; hosting speech by others is not a

ACTIVITY	FEDERAL ELECTION CAMPAIGN ACT OF 1971, AS AMENDED ("FECA")	INTERNAL REVENUE CODE OF 1986, AS AMENDED ("I.R.C.")
WEBSITE ACTIVITIES		
	the company's corporate treasury account. Contributions will be forwarded to candidate campaigns. (h) skimmerhat will provide candidates with the option of assuming limited managerial control over basic biographical information on their candidate pages, as well as setting positions on issues. (i) skimmerhat proposes to transmit contributions to political committees without receiving payment from political committees. The FEC has previously concluded that companies that process contributions to political committees as a service to the political committees must be compensated for those services to avoid making in-kind contributions. See FEC Advisory Opinion 2007-4 (Atlatl). Companies that process contributions as a service to contributors do not need to be compensated for these services by the recipient political committees. The companies are not providing any services or anything of value to the recipient political committees. See, e.g., FEC Advisory Opinion 2011-19 (GivingSphere). (j) Users will make contributions to candidates from skimmerhat's website, rather from the candidates' own websites, and otherwise irrespective of candidate involvement with skimmerhat's candidate pages. Further, upon agreeing to skimmerhat's terms of service, skimmerhat will transmit users' funds only at the request of its users, and not pursuant to negotiated agreements with political	traditional, exclusive public function and does not transform private entities into state actors subject to First Amendment constraints); Lloyd Corp., Ltd. v. Tanner, 407 U.S. 551, 558 (1972) (private property does not "lose its private character merely because the public is generally invited to use it for designated purposes"); Children's Health Defense v. Meta Platforms, Inc., 112 F.4th 742 (9th Cir. 2024) (Ninth Circuit upheld district court's dismissal of First Amendment challenge of Children's Health Defense, a nonprofit founded by independent presidential candidate Robert F. Kennedy, Jr., to Meta's policy of censoring its anti-vaccination Facebook posts; Meta's actions did not constitute state action when federal officials hoped that Meta would take action to censor anti-vaccine content; since Meta believed that vaccines were safe and effective and their use should be encouraged, it did not lose the right to promote these views because they were shared by the government; the Section 230 immunity granted by the Communications Decency Act did not make a difference in the state action analysis since many companies rely on a favorable regulatory environment and if that were enough for state action, every large government contractor would be a state actor; dissenting judge would have allowed the challenge to proceed based on threats made by lawmakers and federal officials to tech companies over their censorship policies and in the meetings Meta held with them over its anti-vaccine policies, especially in light of

ACTIVITY	FEDERAL ELECTION CAMPAIGN ACT OF 1971, AS AMENDED ("FECA")	INTERNAL REVENUE CODE OF 1986, AS AMENDED ("I.R.C.")
WEBSITE ACTIVITIES		
	committees. Compare FEC Advisory Opinion 2011-19 (GivingSphere) (hosting a database and website through which customers identify recipients and transmit funds) with FEC Advisory Opinion 2007-4 (Atlatl) (proposing only to process online credit card contributions initiated on political committees' websites). Accordingly, skimmerhat's operation will not result in prohibited in-kind corporate contributions. See also FEC Advisory Opinion 2025-5 (Politicalmeetings.com) (FEC approved web platform's proposal to allow its subscribers to make small monthly contributions to candidates and national political party committees via its platform and to provide subscribers access to non-public information about political meetings and events with recipient candidates); FEC Advisory Opinion 2015-15 (WeSupportThat.com, a for-profit corporation, proposed to offer an Internet-based service through which users will be able to support or oppose certain actions of federal candidates; corporation's website will enable a user to search for candidates; search for candidates' or officeholders' actions, such as public statements, legislative votes, and sponsorship of particular legislation; make contributions to candidates whose actions the user supports; and send messages to candidates explaining why the user made the contributions; the website will focus on current events and will feature activities and candidates that are gaining the most interest in the media; corporation will receive a processing fee from users that will cover its costs	the Section 230 immunity, which effectively allowed Meta to exercise a distinctive government-conferred power over others' speech), cert. denied, 145 S. Ct. 2846 (2025); O'Handley v. Weber, 62 F.4th 1145 (9th Cir. 2023) (since Twitter acted in accordance with its own content-moderation policy when it limited other users' access to O'Handley's posts and ultimately suspended his account, Twitter's actions were not state action and did not violate O'Handley's constitutional rights), cert. denied, 219 L. Ed. 2d 1318 (2024); Prager University v. Google LLC, 951 F.3d 991 (9th Cir. 2020) (for purposes of state action under the First Amendment, YouTube does not perform a public function by inviting public discourse on its property; otherwise every retail and service establishment in the country would be bound by constitutional norms); Langdon v. Google, Inc., 474 F. Supp. 2d 622 (D. Del. 2007) (internet search engine operated by a private, for-profit corporation was not a public forum). (e) If the Section 501(c)(3) organization invites guest bloggers from only one side of an issue that the organization favors, the IRS may treat the blogger as the organization's agent. If the guest blogger posts statements in support or opposition to a candidate, the IRS will likely find impermissible campaign intervention. (f) A Section 501(c)(3) organization can use its blog as a forum for a candidate debate as long as the organization

ACTIVITY	FEDERAL ELECTION CAMPAIGN ACT OF 1971, AS AMENDED ("FECA")	INTERNAL REVENUE CODE OF 1986, AS AMENDED ("I.R.C.")
WEBSITE ACTIVITIES		
	and provide a reasonable profit; identifying candidates whose activities are of interest to its users, and processing users' contributions to those candidates, were services that the corporation may permissibly provide to its users and would not result in the corporation making prohibited contributions to federal candidates; corporation's listing of candidate activities that it considers most likely to motivate individuals to make contributions on its website does not raise concerns that the corporation is selecting candidate recipients to influence the outcome of the election; user's payment of the processing fee to the corporation will not constitute a contribution to the recipient candidate committee; since fees are for services rendered for the benefit of the contributors, and not of the recipient political committees, the fees do not relieve the recipient political committees of a financial burden they would otherwise have had to pay for themselves); FEC Advisory Opinion 2015-12 (Ethiq, a nonpartisan, for-profit news organization and media corporation, developed a free, downloadable mobile application that will help users identify candidates and corporations that align with their views on a variety of political, social, and economic issues; Ethiq will compile factual information about candidates and list their positions on the issues based on their voting records and public statements; Ethiq's display of information regarding candidates' voting records, statements, and campaign finance information would not be a prohibited corporate contribution); FEC Advisory Opinion 2014-7 (Crowdpac, a	satisfies the following requirements: (i) the organization invites all legally qualified candidates for the contested office; (ii) the organization's website contains a prominent disclaimer that the views expressed are only those of the candidates and not those of the organization, that the organization does not support or oppose any candidate, and that the postings are provided as a public service in the interest of informing the public; (iii) the organization presents the blog posts in a neutral manner, and the questions and the format for the answers do not favor any candidate; and (iv) the blog posts address a broad range of issues in addition to those most important to the organization. (g) Comments from the general public on a blog maintained by a Section 501(c)(3) organization should not be attributed to the organization as long as the organization allows comments to be posted regardless of political viewpoint, and the organization posts a disclaimer stating that the views expressed are only those of the persons posting the comments and not those of the organization, that the organization does not support or oppose any candidate, and that the postings are provided as a public service in the interest of informing the public. Alternatively, the organization can delete all comments that refer to a candidate or political party. Cf. Naffe v. Frey, 789 F.3d 1030 (9th Cir. 2015) (county prosecutor whose official responsibilities did not include publicly commenting on conservative politics and current events

ACTIVITY	FEDERAL ELECTION CAMPAIGN ACT OF 1971, AS AMENDED ("FECA")	INTERNAL REVENUE CODE OF 1986, AS AMENDED ("I.R.C.")
WEBSITE ACTIVITIES		
	commercial entity, developed a web-based platform through which customers identified and made contributions to political committees; users' funds were transmitted only at their request and not pursuant to negotiated agreements with political committees; Crowdpac's arrangement was analogous to widely available services that contributors use to send contributions, such as United Parcel Service and electronic bill-pay services; since the user fees that Crowdpac collected were for services rendered for the benefit of the contributors, and not the recipient political committees, the fees did not relieve the recipient political committees of a financial burden that they would otherwise have had to satisfy for themselves; under this arrangement, neither Crowdpac's services nor its fees were contributions to the recipient political committees). See also MURs 7309 and 7399 (Crowdpac, Inc.) (FEC found no reason to believe that Crowdpac violated 52 U.S.C. §§30102, 30103, and 30104(a) by failing to organize, register, and report as a political committee; decisions regarding placement of candidate pages on its website were not based on any political issue or campaign request, but were driven by Crowdpac's objective, data-driven online marketplace; candidates eliciting the most interest from users were spotlighted as trending on its homepage; the decision to suspend Republican candidates from its website was not motivated by any partisan considerations or made for the purpose of influencing any election, but was based on objective, financial, values-driven business criteria;	maintained a blog and Twitter handle on which he wrote about these issues at night or early in the morning; blog contained the disclaimer, "The statements made on this web site reflect the personal opinions of the author. They are not made in any official capacity, and do not represent the opinions of the author's employer;" court held that the prosecutor did not act under color of state law for purposes of 42 U.S.C. §1983). See generally Allen Mattison, "Friends, Tweets, and Links: IRS Treatment of Social Media Activities by Section 501(c)(3) Organizations," 67 Exempt Organization Tax Review 445 (May 2011). 10. (a) When a Section 501(c)(3) organization or Section 501(c)(4) organization moderates a listserve, for federal elections and elections in states that do not treat communications with members as contributions, the analysis turns on whether the listserve is open only to members, or is also open to the public. (b) For listserves moderated by a Section 501(c)(3) organization that are open only to the organization's members, the organization's employees should not make posts that support or oppose candidates. The organization can take the position that posts by members that support or oppose candidates are permissible as long as the organization permits posts regardless of political viewpoint, posts a disclaimer, and periodically sends list

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WEBSITE ACTIVITIES		
	Crowdpac faced a backlash from its users opposed to President Trump and the Republican party and the threat of users leaving the platform to go to a competitor because of Crowdpac's association with Republican campaigns and its first CEO, a conservative political strategist; Crowdpac may target customers and limit the range of its services as long as it used commercially reasonable criteria; Crowdpac's revenue consisted of fees and voluntary donations in the form of optional tips when customers made donations; the voluntary donations were not contributions to a political committee since they appeared to be provided only in connection with Crowdpac's commercial services, and thus were incorporated into its revenue model). (k) The FEC also opined that skimmerhat's processing and convenience fee of eight percent will not count towards a user's individual contribution limits to a candidate. The FEC has distinguished between situations in which a company provides services to recipient political committees, and situations in which in a company provides services to its customers. In FEC Advisory Opinion 2007-4 (Atlatl), the contractual relationship was between the company that processed the contributions and the recipient political committee. The FEC concluded that the amount of contributions to political committees must include the fees paid by contributors to the company. In contrast, in FEC Advisory Opinion 2011-6 (Democracy Engine), the FEC concluded that the amount of the contributions would not include the processing fees paid by contributors, because the	members a disclaimer stating that the views expressed are only those of the members making the posts and not the organization, that the organization does not support or oppose any candidate, and that the postings are provided as a service in the interest of informing its membership. Cf. Weigand v. National Labor Relations Board, 783 F.3d 889, 897 (D.C. Cir. 2015) (leading up to and during a strike by bus drivers against Veolia Transportation Services, communications on the Facebook page of the union representing the drivers were often impassioned and bellicose; posted comments included a rhetorical question asking if the picketers could bring Molotov Cocktails to picket the hotel where scabs were being housed; Facebook page could only be accessed by union members who were employed and in good standing with the union; no other persons had access to the site or could post comments on the Facebook page; court held that the union was not liable for its members' comments and did not commit an unfair labor practice under Section 8(b)(1)(A) of the National Labor Relations Act; "The Union here did not authorize or otherwise condone the posting of the contested messages on the Facebook page. Weigand tries to overcome this point by suggesting that, in maintaining the Facebook page, the Union somehow facilitated the publication of threats against persons who opted to cross the picket line. The record simply does not bear this out. The Facebook page was private, for Union members only. Indeed, Weigand and other non-Union persons could not

ACTIVITY	FEDERAL ELECTION CAMPAIGN ACT OF 1971, AS AMENDED ("FECA")	INTERNAL REVENUE CODE OF 1986, AS AMENDED ("I.R.C.")
WEBSITE ACTIVITIES		
	services provided by the vendor were "at the request and for the benefit of the contributors, not of the recipient political committees." Thus, fees paid for those services did not "relieve the recipient political committees of a financial burden they would otherwise have had to pay for themselves," and were not contributions to the recipient political committees. FEC Advisory Opinion 2011-6 (Democracy Engine). (l) Since skimmerhat will provide its services at the request of and for the benefit of its customers, and not the recipient political committees, the payment of the convenience fee by the users will not be a contribution by the users to any recipient political committee. (m) The FEC also opined that skimmerhat may provide the factual information about federal candidates to its users as proposed. The information will supplement the overall service offered by the site. skimmerhat's proposal is similar to the one approved in FEC Advisory Opinion 2011-19 (GivingSphere), in which a corporation wished to provide basic factual information about candidates to its customers for use in determining to whom to make contributions through the corporation's web platform. See also FEC Advisory Opinion 2014-7 (Crowdpac provided users with the ability to search candidates' backgrounds, positions, and incumbency status and otherwise review information about candidates and their positions to identify	view the comments on the Facebook page. Therefore, the most that can be said here is that the Union's maintenance of the Facebook page facilitated communications between Union members, not threats against non-Union employees . . . ."). (c) For listserves moderated by a Section 501(c)(3) organization that are open to the public, staff members should not make posts that support or oppose candidates. The organization should post a disclaimer and periodically send list members a disclaimer stating that the organization does not support or oppose any candidate, and that participants in the listserve should not make posts that support or oppose any candidate. (d) For listserves moderated by a Section 501(c)(4) organization that are open only to members, the organization's staff members and members can freely make posts that support or oppose candidates, and can coordinate their posts with candidates. (e) For listserves moderated by a Section 501(c)(4) organization that are open to the public, staff members can make posts that support or oppose candidates as long as they are independent expenditures or permissible in-kind corporate contributions. Participants from the public can make posts that support or oppose candidates as long as the listserve expenses are independent expenditures or are allocated as in-kind contributions to the candidate. In

ACTIVITY	FEDERAL ELECTION CAMPAIGN ACT OF 1971, AS AMENDED ("FECA")	INTERNAL REVENUE CODE OF 1986, AS AMENDED ("I.R.C.")
WEBSITE ACTIVITIES		
	potential recipients of contributions by users; since these search tools supplemented the overall service provided by Crowdpac, the arrangement to match users with candidates and use the Democracy Engine platform to process and forward users' contributions to candidates did not result in impermissible contributions by Crowdpac to federal candidate committees). (n) The FEC also opined that skimmerhat may grant candidates the option of assuming limited managerial control over basic biographical information on their candidate pages, as well as setting positions on issues. These actions would not result in skimmerhat making a prohibited in-kind corporate contribution. skimmerhat represented that the purpose of allowing candidates to make these changes to their profiles is to increase the accuracy of the site's data and the effectiveness of the skimmerhat matching process, both of which advance skimmerhat's commercial interests. See also FEC Advisory Opinion 2014-7 (Crowdpac would not make impermissible corporate contributions when it created a dedicated page for each candidate for federal office who registered an authorized committee with the FEC; candidate pages presented candidates' biographies and photographs and identified offices sought and positions on issues; each candidate had the opportunity to provide content to augment his or her page solely to enhance the quality and accuracy of the information provided to Crowdpac users;	addition, the organization can take the position that the postings are permissible as long as the organization posts a disclaimer, and periodically sends list members a disclaimer stating that the views expressed are only those of the participants in the listserve and not the organization. (f) For elections in states that treat communications with members as in-kind contributions, the rules for listserves open to members of the public discussed above should apply. See generally Allen Mattison, "Friends, Tweets, and Links: IRS Treatment of Social Media Activities by Section 501(c)(3) Organizations," 67 Exempt Organization Tax Review 445 (May 2011). 11. (a) Current IRS guidance does not address dynamic situations in which Web servers can access local databases of information, and can execute software that connects to other Web servers and requests content and then aggregates the content to create dynamic pages that are customized for each individual user. (b) For example, a Section 501(c)(3) organization's website contains a link to the website of a news organization that posts articles of importance to the organization's exempt function. Section 501(c)(3) organization members who live in New York and link to the news organization's website are directed to pages that contain advertisements for consumer products. Section

ACTIVITY	FEDERAL ELECTION CAMPAIGN ACT OF 1971, AS AMENDED ("FECA")	INTERNAL REVENUE CODE OF 1986, AS AMENDED ("I.R.C.")
WEBSITE ACTIVITIES		
	Crowdpac could allow candidates to provide the content through videos). 10. (a) In FEC Advisory Opinion 2015-8, the FEC approved an arrangement established by Repledge, a for-profit corporation, for making charitable contributions and contributions to federal candidates through a web-based platform that served as a virtual meeting place. (b) The platform will allow individuals who register as Repledge members to pledge money to a federal candidate while at the same time designating a charity to receive the funds if the pledge is matched by supporters of the opposing candidate. For example, if Repledge members pledge $1,000 to Candidate X and $700 to her opponent Candidate Y (for total pledges of $1,700), the $1,400 (the amount of matched pledges) will be donated to charities of the members' choice, $300 (the amount of unmatched pledges) will be contributed to Candidate X, and $0 will be contributed to Candidate Y. (c) Repledge will operate through fund drives. Fund drives will be open to all members and are expected to last from seven to fourteen days. During each fund drive, members will make pledges to their preferred candidates and charities by entering their credit card information through a payment processor, such as PayPal or WePay, and indicating the amounts pledged. The payment processor will preapprove – that is, will place a hold on – the amounts pledged and will	501(c)(3) members who live in California, which is in the middle of a hotly contested gubernatorial primary, and link to the news organization's website are directed to pages that contain advertisements for consumer products and for one of the candidates. (c) As another example, a Section 501(c)(3) organization that raises money to fund research and conduct education for a particular disease purchases an online advertisement service from Google. The organization provides a set of images with corporate logos and links to its website, and selects keywords such as "prevention," "symptoms," and "treatment regimen." Google uses the keywords to make the advertisements appear on search result pages on its search engine, and also employs contextual targeting. Contextual targeting places advertisements on a third-party's Webpage. Using contextual targeting, Google places an advertisement on a Webpage that contains an op-ed article in a major newspaper attacking a candidate's position on funding medical research supported by the organization. (d) A Section 501(c)(3) organization that links to other websites should periodically review the pages on the other websites for content that may constitute impermissible campaign intervention. The organization should also review the other websites' home pages. If the organization has concerns about a website, it should consider contacting the website's owner and obtaining

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WEBSITE ACTIVITIES		
	charge the members' credit cards after the fund drive. Once pledges are preapproved, members will not be able to rescind them. (d) After the payment processor charges the members' credit cards, Repledge will inform the payment processor how to allocate the funds (less the processor's fee, which the processor will deduct from the charged amounts) among the recipient charities and candidates based on the amounts of the matched and unmatched pledges. No later than ten days after the fund drive, the payment processor will set up a unique account for each recipient, and will notify each recipient that it may withdraw the funds from its respective account. (e) Repledge will associate individual contributors with the transmitted amounts based on the percentage of candidate pledges that go unmatched. For example, if ten members each pledge $100 to Candidate X (for a total of $1,000), and twenty members each pledge $20 to Candidate Y (for a total of $400), then 60% ($600 out of $1,000) of the pledges to Candidate X will have gone unmatched. Thus, 60% of each individual's pledge to Candidate X (net of fees) will be contributed to Candidate X, and the remaining 40% of each pledge to Candidate X – and 100% of the pledges to Candidate Y – will be donated to the members' designated charities.	permission to replicate the pertinent pages on the organization's website without the content that constitutes campaign intervention. In addition, the organization should document its review through screen shots. (e) When a Section 501(c)(3) organization contracts for dynamic content from a third-party, the contract should contain provisions for the third-party to filter out inappropriate content. See generally Nelson S. DaCunha, "Safe Linking For Section 501(c)(3) Organizations," 20 Taxation of Exempts 26 (May/June 2009). 12. (a) A Section 501(c)(3) organization should not "friend" or "like" a candidate on Facebook since the action shows a preference for the candidate. (b) It is unresolved whether a Section 501(c)(3) organization can follow a candidate on Twitter. Following does not necessarily mean that the organization supports the candidate; rather the organization may follow the candidate for informational purposes. In this situation, the organization should follow all candidates for the same office. Nevertheless, the IRS can take the position that following all candidates is not neutral because visitors to the organization's Twitter site will not see that the organization follows all candidates. Only a certain number of accounts that a user follows are visible to visitors on a user's Twitter page, and the user does not control which accounts appear at any particular time.

ACTIVITY	FEDERAL ELECTION CAMPAIGN ACT OF 1971, AS AMENDED ("FECA")	INTERNAL REVENUE CODE OF 1986, AS AMENDED ("I.R.C.")
WEBSITE ACTIVITIES		
	(f) Aside from agreements that might be necessary to effectuate the transfer of funds after fund drives, Repledge will not enter into any contractual relationships with recipient political committees. The funds transferred as contributions or charitable donations will not be deposited in, or pass through, accounts established or maintained by Repledge. Repledge will disclose to its participating members and to the recipients of pledged funds all transaction and processing fees and the amounts distributed to the respective charities and political committees. (g) Repledge will deduct a commercially reasonable percentage-based transaction fee from each pledge. The fee will be set at a percentage to cover operating costs and generate a reasonable profit. Repledge estimates the fee at one percent each pledge. (h) Repledge will inform its members of the FECA contribution limits, and will not allow members to pledge funds in excess of those limits. Repledge will also require each member to check a box on the website to confirm that the following statements are true and accurate: 1. I am a United States citizen or a lawfully admitted permanent resident of the United States. 2. This contribution is not made from the general treasury funds of a corporation, labor organization or national bank.	(c) It is also unresolved whether a Section 501(c)(3) organization can "friend" or "like" a public official on Facebook. The organization can take the position that it is engaging in lobbying or educational activities, rather than supporting the official's candidacy. If the public official's Facebook page shows visitors only that the Section 501(c)(3) organization likes or is friends with the official, and without any explanation that it is the official government page that the organization likes or is friends with, the IRS can take the position that the organization has engaged in impermissible campaign intervention. In addition, if the organization takes the actions close to an election, the IRS can take the position that impermissible campaign intervention has occurred. (d) A Section 501(c)(4) organization can "friend" or "like" any candidate on Facebook. The expense will either be an independent expenditure or an in-kind contribution. (e) When a candidate likes a Section 501(c)(3) organization on Facebook, the candidate's action should not result in campaign intervention by the Section 501(c)(3) organization. Since the Section 501(c)(3) organization does not control the candidate, the candidate's action should not be attributed to the Section 501(c)(3) organization.

A GUIDE TO ELECTION YEAR ACTIVITIES OF SECTION 501(C)(3) AND 501(C)(4) ORGANIZATIONS

ACTIVITY	FEDERAL ELECTION CAMPAIGN ACT OF 1971, AS AMENDED ("FECA")	INTERNAL REVENUE CODE OF 1986, AS AMENDED ("I.R.C.")
WEBSITE ACTIVITIES		
	3. This contribution is not made from the treasury funds of an entity or person who is a federal contractor. 4. This contribution is not made from the funds of a political action committee. 5. This contribution is not made from the funds of an individual registered as a federal lobbyist or a foreign agent, or an entity that is a federally registered lobbying firm or foreign agent. 6. I am not a minor under the age of 16. 7. The funds I am donating are not being provided to me by another person or entity for the purpose of making this contribution. (i) Repledge will require each member to provide the member's name, mailing address, name of employer, and occupation. Repledge will provide this information to recipients of contributions. The Repledge website will provide the following explanation: Candidates and committees registered with the Federal Election Commission are required to use their best efforts to collect and report the name, address, employer and occupation of all individuals whose contributions to a federal committee exceed $200 in an election cycle. We require you to enter this information so that we can provide	13. When a candidate or public official requests to "friend" a Section 501(c)(3) organization on Facebook, or to "follow" a Section 501(c)(3) organization on Twitter, if the organization's policy is to accept all requests, the organization should accept the candidate's or public official's request. (b) When a candidate posts a political message on the Facebook wall of a Section 501(c)(3) organization, the organization can respond in one of three ways. First, the organization can delete the message. Second, the organization can post a follow-up stating that the posts of others on the wall do not represent the views of the organization, and that the organization does not support or oppose candidates. Third, the organization can place a disclaimer on its Facebook wall or information page that the organization does not support or oppose any candidate, and requesting that visitors do not post comments on any candidate or party. Furthermore, the organization should take a consistent approach for all postings regardless of their content. If the organization were to delete the posts of candidates that are critical of the organization, and post a follow-up for candidates that support the organization, the IRS would likely find impermissible campaign intervention. (c) When a public official uses his or her official government account to post a message, or when a legislator uses his or her campaign account to post an

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WEBSITE ACTIVITIES		
	it to those recipients of your contributions. This helps ensure that your contribution will be accepted. (j) The FEC opined that a monetary pledge from a member to a federal political committee and charity would not be a contribution at the time of the pledge under 52 U.S.C. §30101(8) subject to the ten day forwarding rule of 52 U.S.C. §30102(b)(1). A pledge was not a contribution under 52 U.S.C. §30101(8)(A)(i) and 11 C.F.R. §100.52(a). See also FEC Advisory Opinion 1985-29 (an unsecured promise to pay interest on a loan to a candidate committee was not a contribution, but the actual payment of interest would be). (k) The FEC also opined that Repledge's processing and forwarding of members' contributions to political committees would not result in impermissible corporate contributions from Repledge to recipient committees. Repledge will provide services only at the request and benefit of the contributors, and not of the recipient political committees. It will charge a transaction fee that will cover its costs and provide it with a profit. In addition, Repledge members' funds will be transmitted only at their request and not pursuant to agreements with political committees. Repledge will not contract will the recipient political committees other than for the limited purpose of effectuating authorized fund transfers. (l) It was not legally significant that Repledge will process and transmit contributions only to the major party nominees	issue-oriented message that does not seek support in an election, the Section 501(c)(3) organization can take the position that the discussion is educational and focused on issues. In this situation, no campaign intervention has occurred.

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WEBSITE ACTIVITIES		
	in the 2016 presidential election with pledges to one effectively canceling out pledges to the other. The arrangement did not raise concerns that Repledge is selecting candidate recipients to influence the outcome of the election. As long as Repledge transmits funds to the opposing candidates, as requested by its members, on identical terms and without any preferential placement or treatment, Repledge's reasonable commercial decision to limit its universe of candidate recipients is permissible. (m) It was also not legally significant that the ultimate amount of a member's contribution to a candidate will depend in part on how much the other members pledge to that candidate's opponent. Repledge will establish in advance of accepting pledges the criterion under which it will transmit its members' contributions to candidates, the percentage of pledges that go unmatched, and will communicate that criterion to users before they designate the recipients and amounts of their pledges. At the close of a fund drive, Repledge will disclose all transaction costs and processing fees, and the amounts distributed to the respective charities and political committees, thereby enabling verification of the matching calculations. (n) The FEC also opined that Repledge's processing and forwarding of members' contributions to federal committees would not violate the prohibition on a corporation acting as a conduit for contributions earmarked to candidates under 11 C.F.R. §110.6(b)(2)(ii). Repledge will operate on a	

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WEBSITE ACTIVITIES		
	commercial basis and will charge its members a fee for its services that will cover its costs and provide it with a profit. Further, Repledge will process and transmit its members' contributions to political committees in the ordinary course of business and only at the request of its members. Repledge's actions in calculating and processing member contributions is an electronic transactional service similar to delivery services, bill-paying services, or check writing services. Therefore, the contributions made through the Repledge platform were not contributions to an intermediary and earmarked for a candidate; rather they were direct contributions to the candidate made through a commercial processing service. (o) Finally, the FEC opined that Repledge's receipt of a transaction fee would not constitute its receipt of contributions. In addition, a member's payment of a transaction fee to Repledge or its payment processor would not be a contribution to the recipient political committee. The fees paid by Repledge members were not contributions to Repledge because they were not gifts or donations to Repledge, but commercial payments in exchange for its processing services. The fees were intended to be commercially reasonable, to cover Repledge's operating costs, and to generate a reasonable profit. Repledge charged the same fees regardless of whether its members' pledges ultimately resulted in contributions to a federal candidate or donations to charity.	

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WEBSITE ACTIVITIES		
	(p) The members' fee payments were not in-kind contributions to the recipient committees because Repledge provided its services to its members, and not to the recipient committees. The fees did not relieve the recipient committees of a financial burden they would otherwise have had to pay. They also did not result in the committees receiving Repledge's payment processing services at less than the usual rate. See also FEC Advisory Opinion 2021-9 (sale of customized sponsored advertisement services to political committees for a commercially reasonable fee does not result in an in-kind contribution to client political committees). 11. (a) In FEC Advisory Opinion 2016-8, the FEC opined that eBundler.com, LLC, a for-profit firm that will provide online contribution processing and fundraising services, would not make contributions to political committees, and would not be subject to any of FECA's reporting requirements. (b) The firm developed two web-based platforms. The first, *Donorship*, processed individual contributions, and allowed an individual to solicit his or her online contacts for contributions to political committees. The second, *eBundler*, provided fundraising services to political committees and organizations that contracted with the firm ("political committee clients").	

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WEBSITE ACTIVITIES		
	(c) Individuals that wish to use the *Donorship* platform will begin by searching the database for a specific candidate, committee, organization, or cause that the individual wishes to support. An individual will be able to filter his or her results by location or office sought. If an individual wishes to make a contribution to a political committee not already included in the database, the firm will add the committee. A political committee will not need to be a political committee client to be included in the database. (d) To make a contribution through *Donorship*, the individual will attest that by "making this contribution, I confirm that the following statements are true and accurate: I am not a federal contractor; I am at least eighteen years old; I am either a U.S. citizen or lawful permanent resident of the U.S.; I am making this contribution from my own funds, and funds are not being provided to me by another person for the purpose of making this contribution; I am making this contribution with my own personal credit or debit card and not with a corporate or business card or a card issued to another person." (e) Individuals will be prompted to enter the amount of their contribution, their contact information, employer, occupation, and credit card information. Individuals will be notified of the contribution limits, and that any contribution aggregating over $200 will be publicly reported by the	

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WEBSITE ACTIVITIES		
	recipient political committee to the FEC. The platform will reject a single contribution that exceeds federal limits. (f) The firm will process all contributions, regardless of whether the recipient is a political committee, through an account segregated from the firm's operating account. Although all contributions will be processed through one account, the firm and its e-commerce vendor will track and keep itemized records of each contribution within the *Donorship* and *eBundler* platforms to ensure that all funds intended for federal contributions are from federally permissible sources. The firm will transfer contributions made through the *Donorship* platform within ten days of receipt. (g) The fundraising tool will allow an individual to import a contact list from an existing online account such as Outlook, Gmail, or LinkedIn. The individual will then be able to select contacts to solicit for contributions to the individual's selected recipient political committee. When an individual selects contacts to solicit, the platform will notify him or her that soliciting foreign nationals for contributions to federal, state, or local elections is prohibited, and that soliciting federal contractors for contributions to federal committees is prohibited. (h) The *eBundler* platform will allow political committee clients to personalize their landing pages on the *Donorship* platform, track contributions they receive through	

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WEBSITE ACTIVITIES		
	Donorship, obtain donor information from individuals using the fundraising tool, and contact donors directly through *eBundler*. (i) A political committee wishing to become a political committee client will first register with the firm. The firm will verify the political committee's identity and bank account information. The firm and political committee will then enter into a contract that covering the services that the firm will provide through the *Donorship* and *eBundler* platform and the fees for the services. (j) If the recipient political committee is a political committee client, the fees paid by the political committee client will cover all costs associated with contribution processing and forwarding, the establishment and maintenance of the two platforms, and a reasonable profit. Fees will be assessed according to a variable fee structure that takes into account the number of new contributors that make contributions to the political committee client through the *Donorship* platform. The general fee structure will be the same for political committee clients and non-political committee clients. (k) If an individual makes a contribution to a political committee that is not a political committee client, the firm will deduct from the contribution a fee for the firm's contribution processing and forwarding services. The fee will cover the firm's financial institution costs, development	

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WEBSITE ACTIVITIES		
	costs, operating expenses, and a reasonable profit. The individual will be notified of the fee arrangement before completing the contribution transaction. The firm will not include the fee in the total contribution amount reported to the recipient political committee. (l) The FEC opined that the provision of contribution processing services to individual contributors for a commercially reasonable fee will not result in the firm making contributions to political committees. The provision of the fundraising tool did not change this result because the individual user, rather than the firm, will have complete control over whether to use the tool. (m) The FEC also opined that a vendor providing contribution processing services to a political committee as a commercial vendor does not make a contribution to the committee when the commercial vendor: (i) provides services in the ordinary course of business at the usual and normal charge; (ii) forwards contributions through a segregated account to candidates and their committees; and (iii) employs adequate screening procedures to ensure that it does not forward illegal contributions. (n) The firm's service package satisfied the three criteria of subparagraph (m). The service package allowed political committee clients to customize their landing pages, create form solicitation letters, track individuals' fundraising progress, catalogue new contributors, direct-message	

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WEBSITE ACTIVITIES		
	contributors through the *eBundler* platform, and have contributions processed and forwarded through the *Donorship* platform. (o) Finally, the FEC opined that the firm will not have any reporting obligations under FECA. First, the firm will be a commercial service provider, and not a political committee. Second, since the firm will not engage in express advocacy or otherwise make independent expenditures, it will not be subject to the reporting requirements for independent expenditures. Third, since all relevant communications will occur on the Internet, the firm will not be subject to the reporting requirements for electioneering communications. (p) The FEC also opined that the firm will not be an intermediary or conduit subject to FECA's reporting requirements. The statute and regulations required intermediaries or conduits of earmarked contributions to report the original source of the contribution and the recipient candidate or authorized committee. 52 U.S.C. §30116(a)(8); 11 C.F.R. §110.6(c)(1). When a commercial vendor provides contribution processing services to contributors, the contributions made through the platform are not earmarked through an intermediary to a candidate or authorized committee, but are direct contributions to the candidate or authorized committee made via a commercial processing service. In addition, a commercial fundraising firm retained by a candidate or the candidate's authorized committee to assist in fundraising is not a conduit. 11	

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WEBSITE ACTIVITIES		
	C.F.R. §110.6(b)(2)(i)(D). Since the firm will act as a commercial vendor when it contracts with its political committee clients, it will also qualify as a commercial fundraising firm, and not a conduit. See also FEC Advisory Opinion 2019-4 (since owner of online contribution processing platform provided its social networking services to all principal campaign committees and national party committees enrolled in the platform for a commercially reasonable rate, and regardless of whether a committee actually received contributions through the platform, the enrolled committees' use of those services to communicate with users did not result in contributions to those committees from the owner of the platform; since the owner was a commercial vendor when it provided its services to enrolled committees, it qualified as a commercial fundraising firm that was not subject to the reporting requirements for conduits and intermediaries; since owner was a commercial vendor forwarding contributions to political committees, it was subject to the requirements for forwarding contributions under 52 U.S.C. §30102(b) and 11 C.F.R. §102.8(a)-(b)); FEC Advisory Opinion 2018-5 (LLC that elected to be taxed as a corporation provided donation-processing services to nonprofit and charitable organizations through two platforms, "Round-Up" and "Micro-Pledge;" LLC planned to provide corresponding contribution-processing services to political committees through the same platforms; through the Round-Up platform, a political committee will invite individuals to round up their credit or	

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WEBSITE ACTIVITIES		
	debit card purchases and contribute the difference to the political committee; through the Micro-Pledge platform, a political committee will invite individuals to pledge contributions of a set amount every time a specified event occurs; such as when a candidate's name appears in a tweet made by his or her opponent; LLC will make its platforms available to political committees regardless of party or partisan affiliation; the provision of contribution-processing services to a political committee by the LLC as a commercial vendor was not a contribution to the political committee; the test for commercial vendor status was the commercial vendor rendered services in the ordinary course of business and at the usual and normal charge, forwarded contributions through a segregated account, and employed adequate screening procedures to ensure that it was not forwarding illegal contributions). 12. (a) In FEC Advisory Opinion 2017-6, the FEC opined on the activities of a for-profit LLC treated as a corporation under FECA that will develop and administer a mobile app that allows users to round up the charge from their credit and debit card purchases, and contribute that amount to federal candidates. The significance of this opinion is that the FEC permitted a for-profit entity to identify for its customers the most competitive Democratic candidates who election could flip control of Congress, and to provide a way to make contributions to these candidates.	

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WEBSITE ACTIVITIES		
	(b) The firm will use data and analysis to identify swing districts in the U.S. House of Representatives and Senate elections, and from those swing districts the firm will select 20-30 candidates to include in the app as "Featured Candidates." There will be no way for candidates to apply to be Featured Candidates. The firm may add or remove candidates from the app over time as it updates its research. Decisions about which candidates to include as Featured Candidates will not be made for purposes of influencing any election, but to increase user participation in the app. (c) A user will begin the process of using the app by providing information to the firm, through its website, about the credit cards, debit cards, and bank accounts the user plans to use to make contributions. The user will then download the app and choose one of the following three ways of selecting candidates and distributing funds among them: (i) The "All Candidates" option: The app will distribute the user's funds equally among all the Featured Candidates. (ii) The "Custom Basket" option: The user will choose which of the Featured Candidates to support, and the app will distribute the user's funds equally among the chosen candidates. (iii) The "Project Basket" option: The user will select groups of candidates that the app creates from the list of	

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WEBSITE ACTIVITIES		
	Featured Candidates based on criteria that the firm determines are likely to encourage user participation, such as region, gender, type of opponent (e.g., challengers or incumbents), or funds raised to date. (d) If the firm adds or removes candidates from a Project Basket, any user who already selected that Project Basket will be notified and given a chance to affirmatively opt in to the new version of the Project Basket. If the user takes no action, his or her funds will continue to be distributed to the candidates in the previous version. (e) Any time the user makes a purchase with the card or account he or she entered in the app, the app will round up the amount of the purchase to the nearest whole dollar and treat the difference between the original purchase amount and the rounded-up amount as a pledged contribution to the candidates the user has selected. These amounts will be treated as pledges until the combined pledges reach a minimum threshold, such as $10, at which time the firm will charge the user's card or account for those pledges and deposit the funds into a merchant services account. The merchant services account belongs to the firm, and is separate from its general treasury account. (f) After the user is charged for those pledges, the process will reset and the user will not be charged again until his or her combined pledges again reach the minimum threshold. If users withdraw from participation in the app before	

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WEBSITE ACTIVITIES		
	reaching that threshold, their pledges will be cancelled and their card or account will not be charged. (g) The firm will transfer contributions from its merchant services account to the candidate committees no later than ten days after the funds are placed in the account. The firm will not exercise any discretion or control over users' funds in the account, except that it will not process a contribution that exceeds applicable contribution limits. (h) The firm will charge users a fee that will: (i) cover the firm's overhead, research, programming, and other costs; (ii) cover bank fees and processing fees incurred in credit and debit card transfers; and (iii) provide a commercially reasonable profit. The firm will not contract with candidate committees to provide contribution processing services, nor will it receive compensation from the recipient committees. The firm's fee will be deducted from the user's contribution before it is transferred from the merchant services account to the recipient committees. The fee will be transferred to the firm's general treasury account, and the remainder will be transferred to the recipient committees. (i) When forwarding contributions to the recipient committees, the firm will provide the committees with each contributor's full name, address, occupation, and employer, which users will be required to provide before they can make contributions. Users will receive electronic notice of	

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WEBSITE ACTIVITIES		
	their contributions to each committee so that they can monitor their contribution limits. (j) In its first election cycle, the firm will market its app to Democratic contributors. The app will feature only Democratic candidates due to the current groundswell in voter and donor interest in bringing the House under Democratic control. The firm's founders do not believe they could successfully market the app as a bipartisan platform in the current political environment. (k) The FEC opined that the firm can provide analysis and contribution processing services to users for a fee without the fee being a contribution by the firm to the recipient political committees. Entities that process contributions as a service to contributors without entering into agreements with, or receiving compensation from, the recipient political committees are not making contributions because the entities are not providing any services to the recipient political committees. The FEC also considers whether the services relieve the recipient committees of any financial burden or obligation they would otherwise incur, thereby providing something of value that would be a contribution from the entity that provides the service. The fees that the users will pay will not be contributions to the firm, but commercial payments in exchange for processing services. In addition, the users' fees will not be contributions to the recipient committees because those amounts will be retained by the firm and not transferred to the committees, and will not	

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WEBSITE ACTIVITIES		
	relieve the recipient committees of a cost they would otherwise incur. (l) The FEC also opined that the firm can limit the recipient committees to which users can make contributions without the services provided or the fees paid for those services being a contribution to the service recipient. Businesses that provide services to contributors, such as those that process payments for contributions or provide information about candidates and elections, can rely on commercial considerations to target customers and limit the range of services provided without making contributions. (m) The firm will select only Democratic candidates as Featured Candidates, and will market its app and services to Democratic users, based on its determination that this is the best way to attract users and promote the firm's commercial success in the current political environment. Although the firm will allow users to make contributions only to the Featured Candidates, it will select candidates it believes will increase user participation and use of the app, based on its own research and user feedback. The firm has determined that featuring Democratic candidates in swing districts on the app is the most marketable way for it to provide a service to users, by helping them identify which candidates will benefit most from the contributions. (n) The FEC also opined that a contribution made through the app would be a direct contribution from the user to the	

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WEBSITE ACTIVITIES		
	recipient committee, and not a contribution earmarked through a conduit or intermediary. All contributions made by a person, including contributions that are earmarked or otherwise directed through an intermediary or conduit to a candidate, are treated as contributions from the person to the candidate. 52 U.S.C. §30116(a)(8); 11 C.F.R. §110.6(a). A conduit or intermediary is any person who receives and forwards an earmarked contribution to a candidate. 11 C.F.R. §110.6(b)(2). A forwarded earmarked contribution does not count against the conduit's contribution limits unless the conduit exercises direction or control over the choice of the recipient candidate. 11 C.F.R. §110.6(d)(1). If the conduit exercises direction or control, the entire earmarked contribution is treated as a contribution from both the original contributor and the conduit. 11 C.F.R. §110.6(d)(2). (o) Persons prohibited from making contributions and expenditures cannot be conduits or intermediaries. 11 C.F.R. §110.6(b)(2)(ii). Since corporations cannot make contributions to candidate committees, they cannot serve as conduits. However, certain electronic transactional services that assist a contributor in making a contribution do not run afoul of the prohibition on corporations acting as a conduit or intermediary for earmarked contributions. These services are akin to widely available delivery services, such as United Parcel Service or an electronic bill-pay service, such as those provided by banks.	

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WEBSITE ACTIVITIES		
	(p) The firm's actions in calculating and processing member contributions are a permissible electronic transactional service. In addition, the firm will communicate clearly to users at the time they make their pledges that contributions will be split equally among the selected candidates. Therefore, users will choose to make pledges subject to that equal division in order to benefit from the firm's services. See also FEC Advisory Opinion 2023-11 (conduit rules apply to committees that will solicit and forward contributions after a predetermined event when the ultimate recipient was not yet identified at the time of the solicitation when: (1) the condition that would trigger the disbursement was objectively determinable and outside the control of the committee forwarding the contributions; (2) the committee forwarding the contributions specified a date certain by which the condition would or would not be met; (3) the committee forwarding the contributions would refund or otherwise lawfully distribute the funds if the triggering condition was not met; and (4) all of the foregoing were clearly communicated to contributors). FEC Advisory Opinion 2023-8 (nonconnected political action committee will solicit funds earmarked for certain federal candidate committees; before forwarding an earmarked contribution to the designated candidate committee, the PAC will deduct funds to pay its own merchandise and shipping costs, payment processing costs, and administration and solicitation costs; the amount of each	

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WEBSITE ACTIVITIES		
	earmarked contribution withheld by the PAC to pay its own costs will be a contribution from the original contributor to the PAC; the PAC must forward the remaining amount of each earmarked contribution to the designated candidate committee and disclose it in reports to the FEC as a receipt and disbursement under 11 C.F.R. §§102.8 and 110.6; the forwarded amount would be a contribution from the original contributor to the candidate committee and not from the conduit PAC) 13. (a) In FEC Advisory Opinion 2018-13, the FEC addressed the provision of OsiaNetwork's services to political committees that enabled individuals to use the processing power of their Internet-enabled devices to mine cryptocurrencies to benefit political committees. The FEC opined that OsiaNetwork, as a commercial vendor providing a service to the recipient political committees for a commercially reasonable fee, would not make contributions to those political committees. The acts of the individuals would not come within the volunteer Internet activities exception, and would result in contributions from the individuals to the participating political committees. (b) OsiaNetwork will provide the tools necessary to create a Webpage on a federal political committee's website that provides the methodology to pool the processing power of individual supporters' Internet-enabled devices. Once a political committee has set up the Webpage, an individual who wants to participate in a mining pool would visit the	

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WEBSITE ACTIVITIES		
	page and allow the political committee to use the processing power of the individual's device by: (i) accepting the terms of service; (ii) designating the percentage of their device's processing power they wish to use for the cryptocurrency mining pool; and (iii) keeping that Webpage open for as long as they would like to continue using their device's processing power as part of the cryptocurrency mining pool. (c) Individuals will be able to use their computer processing power for more than one political committee at a time, as long as each of the political committees is a client of OsiaNetwork. OsiaNetwork's platform will be used to pool the processing power from individuals supporting multiple political committees as well as nonpolitical nonprofit clients. OsiaNetwork will receive the mining rewards generated by the pooled processing power. The individuals will not have an ownership interest in or any rights to the mining rewards generated. OsiaNetwork will allocate the mining rewards among its clients proportionately to the number of hashes that each committee's volunteer individuals generate to solve the block that generates the mining reward. OsiaNetwork will then subtract its processing fee and transfer to each political committee funds in United States currency equivalent to the cryptocurrency value allocated to that committee. The processing fee will be a percentage of the mining rewards generated, and the percentage will remain the same regardless of how much cryptocurrency is mined.	

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WEBSITE ACTIVITIES		
	(d) A political committee will contract with OsiaNetwork for the provision of the necessary infrastructure and the receipt of mining reward, and may enter into a separate contract with the individuals who wish to allow their devices' processing power to be used for the benefit of that committee. The individuals will not have a direct contractual relationship with OsiaNetwork. (e) The FEC found that the individuals who participate in the cryptocurrency mining pool will be providing something of value to the political committees: the money transferred to the political committees through OsiaNetwork's cryptocurrency mining pool platform. However, the exception to the definition of contribution for uncompensated Internet activities under 11 C.F.R. §100.94 did not apply. The regulation defined Internet activities as including, but not limited to, "sending or forwarding electronic messages; providing a hyperlink or other direct access to another person's website; blogging; creating, maintaining, or hosting a website; paying a nominal fee for the use of another person's website; and any other form of communication distributed over the Internet." (f) The FEC opined that each of the activities in the definition includes a communicative element, whether by directly expressing a message (e.g., sending an e-mail or blogging), or amplifying another person's message (forwarding an e-mail, providing a hyperlink to another person's website, or creating a website). Individuals'	

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WEBSITE ACTIVITIES		
	participation in cryptocurrency mining pools would not involve any expressive activity or distribution of any other person's communication. Rather, it would involve only the passive provision of processing power to generate funds for political committees, and would not be a form of communication distributed over the Internet. Accordingly, the money received by a political committee from the cryptocurrency mining pool will be a contribution equal to the value in U.S. dollars of the cryptocurrency that is mined by the pool for the committee's benefit. (g) OsiaNetwork must use a reasonable method of allocating the contribution proportionally among the individuals who participate in generating the funds. One such reasonable method would be to allocate the contribution to the individual contributors proportionately to the number of hashes that each individual generates in order to solve the block that yields the mining reward. The contributions will be subject to the amount limitations, source prohibitions, and reporting requirements of FECA. (h) OsiaNetwork would not make a contribution to a political committee as long as it acted as a commercial vendor that (i) rendered services in the ordinary course of business and at the usual and normal charge; (ii) forwarded contributions through a segregated account to candidates and political committees; and (iii) used adequate screening procedures to ensure that they were not forwarding illegal or excessive contributions. For the third requirement,	

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WEBSITE ACTIVITIES		
	OsiaNetwork must adequately screen contributions to ensure that they do not exceed the applicable contribution limits and are not from prohibited sources. OsiaNetwork could fulfill this obligation by requiring contributors to affirm their eligibility under federal law to make contributions, and by not allowing contributors to exceed contribution limits through its infrastructure. For a discussion of the exception to the definition of contribution for uncompensated Internet activities, see Paragraph 10 of the FECA column for "Campaign Activities of Section 501(c)(3) Organization's Directors, Officers, and Employees." 14. (a) In FEC Advisory Opinion 2021-7, the FEC approved the proposal of PAC Management Services LLC ("PACMS") for individuals to solicit and make contributions to political committees via its online platform. The FEC opined that the services would not cause PACMS to make, facilitate, or be a conduit for contributions, and to incur registration or reporting obligations. (b) PACMS is a for-profit, limited liability company treated as a partnership for federal income tax purposes, and each partner is an S corporation. PACMS is not owned, established, maintained, or controlled by any federal candidate or political party, and has no affiliated political committees. PACMS does not solicit any political contributions, or engage in express advocacy of any	

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WEBSITE ACTIVITIES		
	candidates, political committees, or political party committees. (c) PACMS proposes to allow individuals to use its online platform to solicit and make contributions to federal candidates and political committees (other than separate segregated funds). PACMS's platform will enable its clients to transfer funds to PACMS and make contributions from those funds, and will provide a convenient vehicle through which individuals authorized by PACMS's clients to solicit those clients for contributions. (d) PACMS will require each client to sign a contract certifying that the individual is eligible to make political contributions under federal law. The client will then receive login credentials to PACMS's secure interface on the Internet, and will use that interface to transfer a minimum of $5,000 to PACMS by online bank transfer or credit card. The client may supplement those funds by making additional transfers, or request and receive a refund of any unused remaining funds. PACMS will hold all client funds in an FDIC-insured bank account (the "Client Fund Account") separate from its own accounts, and will be contractually obligated to treat each client's funds as that client's property, the disposition of which is subject to the client's sole direction. (e) Once a client transfers funds to PACMS, the client may designate other individuals to solicit contributions from the	

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WEBSITE ACTIVITIES		
	client by entering the individual's name and email address into the interface. Each designated solicitor will receive login credentials to use the PACMS interface to make authorized solicitations. Prior to receiving these credentials, PACMS will require each solicitor to certify that he or she is eligible to solicit contributions under federal law. PACMS will not allow federal candidates, political committees, political party committees, or their agents, to serve as solicitors, and will require its clients and their solicitors to certify to the same. A client may decide not to contribute in response to a solicitation and may remove authorization from any solicitor at any time. (f) PACMS will charge each client a flat annual fee of at least $100, which PACMS will determine and adjust based on its business judgment about what is a commercially reasonable figure reflecting the fair market value of its services. If a client uses a debit or credit card to deposit funds into his or her account, PACMS will automatically withdraw from the account the service fee it is charged for the transaction by the debit or credit card company. The annual fee, along with debit and credit card service fees, are designed to allow PACMS to cover its costs and earn a reasonable profit. (g) Once a solicitor sends a solicitation email, a contributor may change the contribution amount, reject the solicitation by clicking a "Do Not Contribute" button, or contribute by clicking a "Contribute" button. If a contributor decides to	

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WEBSITE ACTIVITIES		
	contribute in response to a solicitation, the interface will require the client to confirm affirmations and disclaimers concerning the legality of the contribution. (h) After a client has initiated a contribution via the platform, PACMS's interface will "accept a contribution request" if the contribution (together with any previous contributions made through the platform) does not exceed the applicable contribution limits and the client has sufficient funds in the Client Fund Account. PACMS will then forward funds from the client's Client Fund Account to the client-designated political committee. PACMS states that it intends to comply with all contribution-forwarding requirements under 52 U.S.C. §30102(b) and 11 C.F.R. §102.8, including timeframes and providing recipient political committees with accurate information regarding the contributor and the contribution. (i) Since PACMS is a partnership for federal income tax purposes, any contributions made by it would be attributed to its corporate partners and therefore be impermissible corporate contributions under 52 U.S.C. §30118(a). The FEC found that PACMS would not make any contributions since it only processed contributions as a service to contributors. In making this determination, the FEC examines whether the entity processes contributions at the request and for the benefit of the contributors, rather than the recipient political committees. The FEC also considers whether the entity's services relieve the recipient	

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WEBSITE ACTIVITIES		
	committees of any financial burden or obligation they would otherwise have, thereby providing something of value that would be a contribution from the entity to the recipient political committee. In addition, PACMS will not enter into any relationships with political committees beyond those required to forward its clients' contributions and contributor information. Although PACMS will allow contributors to designate solicitors, PACMS will prohibit solicitors from being federal candidates or political committees or their agents. (j) The FEC also found that PACMS would not engage in prohibited corporate facilitation of making contributions under 11 C.F.R. §114.2(f). Facilitation means using corporate resources or facilities to engage in fundraising activities. Facilitation does not occur when a vendor does not provide services to any candidate or political committee. PACMS will provide services solely to its individual client contributors, and not to the recipient political committees. (k) Since PACMS will not provide goods or services to any candidate or political committee, PACMS will not be a commercial vendor under 11 C.F.R. §§114.2(f) and 116.1(c). (l) The FEC also found that PACMS will not be subject to any of FECA's reporting requirements. First, since it did not make contributions or expenditures, it was not a political committee. Second, since PACMS will not expressly	

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WEBSITE ACTIVITIES		
	advocate the election or defeat of a clearly identified candidate, it will not make independent expenditures. Third, since its services were provided only over the Internet, it will not make electioneering communications. (m) In addition, PACMS will not be subject to the reporting requirements on, and the prohibition on corporations from acting as intermediaries or conduits of contributions earmarked to candidates or their authorized committees under 52 U.S.C. §§30116(a)(8) and 30118(a), and 11 C.F.R. §110.6(b)(2)(ii) and (c). Commercial entities that provide electronic transactional services to assist contributors to make contributions are not intermediaries or conduits because their services are similar to delivery services, bill-paying services, or check writing services. Contributions made through PACMS's platform will be direct contributions to candidates made through a commercial contribution-processing service, rather than contributions to a conduit or intermediary earmarked for a candidate or authorized committee. (n) Neither the annual fee nor the debit/credit card service fee that a client pays to PACMS would be a contribution to any of the political committees to which the client makes contributions using PACMS's services. Since the fees that PACMS will receive from its clients are to pay for services performed for the benefit of the contributors, and not the recipient political committees, the fees do not relieve the recipient political committees of a financial burden they	

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WEBSITE ACTIVITIES		
	would otherwise have had to pay for themselves. Thus, the fees will not be contributions to any of the candidates, political committees, or political party committees to which the client makes contributions using PACMS's services. (o) Finally, PACMS may permit individuals who work for corporations and trade associations, acting in their personal capacities, to use the PACMS platform to solicit contributions. 15. (a) In FEC Advisory Opinion 2021-10, the FEC approved the proposal of Retail Benefits, Inc. ("RBI") to allow individuals to make contributions to political committees through RBI's online platform. (b) RBI enters into licensing agreements with for-profit and non-profit entities ("affiliates") that allow them to use customized versions of RBI's browser extensions and mobile apps (collectively, "software") to offer loyalty programs to their customers and supporters (collectively, "users"). Affiliates determine the look of the software and market it as their own. (c) RBI does not charge affiliates for its services. Instead, RBI's affiliates are responsible for marketing the software and registering new users. Users may access the affiliate-branded software through links provided by the affiliate or through the affiliate's app store. Through that software, the user registers to participate in the affiliate loyalty program	

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WEBSITE ACTIVITIES		
	by setting up an account and agreeing to the terms of service. (d) RBI has developed proprietary processes that enable it to identify rebates and other incentives offered by online merchants. Participating merchants agree to provide rebates to RBI when registered users make qualifying purchases from them. RBI retains a portion of each user's rebate in its corporate account and deposits the remainder in an account set up by the user when the user registers with the affiliate. Rebates accumulate in the user's account until dispensed by RBI as prearranged intervals as directed by the user. Users may opt to receive their accumulated rebates as cash back or in other ways allowed by the affiliate. (e) Under RBI's proposal, when a user registers to use a political committee's software to shop with participating merchants online, the software will give the user the option of contributing all or a portion of the user's future rebates to that political committee. A user will be able to direct contributions to any political committee with which the user has registered and to register with more than one political committee. A user will also be able to modify or cancel the contribution at any time before the rebated funds hit the user's account. Users will not be required to make contributions to use a political committee's software to shop, and users will earn rebates at the same rates and on the same terms regardless of whether they choose to make contributions. Each user's aggregate contributions to all	

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WEBSITE ACTIVITIES		
	political committees made via RBI's platform will be limited to $200 per calendar year. (f) RBI will transfer the user's share of any rebates into the user's segregated account as soon as practicable after receipt from a participating merchant. User accounts will be held separately from corporate funds under RBI's control. Users who wish to use rebated funds to make contributions to a political committee must agree to treat the funds as earned income and to receive an IRS Form 1099, provide their name, address, occupation, and employer's name, and verify that they are a United States citizen or permanent lawful resident alien, are not a federal contractor, and are using their own funds to make contributions. (g) RBI will transmit a user's rebate from the user's account to the political committee designated by the user, along with the user's identifying information and verifications, within ten days after receiving the rebate from a participating merchant. (h) RBI will not solicit users on behalf of any political committee or drive web traffic to any committee's software. RBI generally will let committees decide on the design and content of the software. RBI will not create or offer any content that promotes, supports, attacks, or opposes any candidate, political party, or political committee, or that advocates the election or defeat of any candidate for public office. RBI's incentives and rebates will be set at its	

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WEBSITE ACTIVITIES		
	customary market rates. RBI states that it does not support any political party, candidate, or political cause. (i) The FEC opined that RBI may transfer some or all of a user's rebates to a political committee as instructed by the user without RBI making a contribution to the committee. RBI will be acting as a commercial vendor to that committee and will comply with the requirements for forwarding contributions. (j) A service provider does not make a contribution to a political committee when it acts as a commercial vendor by: (i) rendering services in the ordinary course of business at its usual and normal charge or in exchange for bargained-for consideration; (ii) forwarding contributions through a segregated account to candidates and committees; and (iii) employing adequate screening procedures to ensure that the service provider does not forward illegal contributions. (k) RBI's proposal satisfies the first requirement. The services that RBI proposes to provide to political committees are comparable to the services that RBI provides to its non-political committee affiliates. In exchange, political committee affiliates, like non-political committee affiliates, will be responsible for marketing the software to potential users and registering new users for RBI's platform. Any new users who then make qualifying purchases from participating merchants through RBI's platform will increase RBI's revenue. A company's provision of contribution	

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WEBSITE ACTIVITIES		
	processing services to political committees in exchange for their marketing services is a commercially reasonable transaction made in the ordinary course of business when the marketing services could lead to increased revenue for the company. (l) RBI's proposal also satisfies the second requirement. RBI will hold users' funds separate from its corporate funds. RBI will only permit a user's rebate funds to be used to make contributions after the user agrees to treat the funds as earned income and receive an IRS Form 1099. RBI will also forward contribution to political committees within ten days after receiving and depositing the funds in users' accounts as required by 52 U.S.C. §30102(b) and 11 C.F.R. §102.8. (m) RBI's proposal also satisfies the third requirement. RBI will screen contributions to ensure that they are neither excessive nor from prohibited sources. Each registered user must affirm that the user is making the contributions from the user's own, permissible funds; attest to statements verifying the user's eligibility under federal law to make contributions; and be limited to making contributions through RBI's platform that do not exceed $200 per year in the aggregate. (n) Finally, the FEC opined that RBI is not required to file any reports. RBI proposes to continue to derive its revenue from merchants' incentive payments and from users' earned income. Neither of these forms of revenue is a contribution	

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WEBSITE ACTIVITIES		
	that triggers reporting requirements. Further, there is no indication that RBI's proposal will cause it to make any expenditures that trigger reporting requirements. (o) Since RBI will not advocate the election or defeat of any federal candidate, it will not make independent expenditures that trigger reporting requirements. In addition, given that RBI's proposal is limited to providing contribution processing services over the internet and does not include any broadcast, cable, or satellite communications, RBI's proposal does not implicate the reporting requirements for electioneering communications. (p) Under 52 U.S.C. §30116(a)(8) and 11 C.F.R. §110.6(c)(1), intermediaries or conduits of earmarked contributions must report the original source of the contribution and the recipient candidate or authorized committee. Under 11 C.F.R. §110.6(b)(2)(i)(D), a commercial fundraising firm retained by the candidate or the candidate's authorized committee to assist in fundraising is not a conduit. Since RBI will act as a commercial vendor in providing its services, RBI will also qualify as a commercial fundraising firm. Accordingly, RBI will not be subject to the reporting requirements for conduits. 16. (a) In FEC Advisory Opinion 2022-10, the FEC approved the web-based contribution platform of Sprinkle, a Delaware corporation organized and operated solely for commercial purposes.	

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WEBSITE ACTIVITIES		
	(b) Sprinkle will provide a variety of online tools to its users to help them identify candidates who share their positions and priorities on issues, including searching and filtering candidates by issues, geography, voting records, scorecards from advocacy organizations, endorsements, and biographical information. Sprinkle has developed a proprietary algorithm based on publicly available data that can recommend candidates to users based on information provided to the platform by the users. Sprinkle will also use machine learning based on candidate data, prior election results, polling trends, and geographic data to help users decide where their contributions will make an impact. (c) Sprinkle will display on its platform data from publicly available campaign finance reports filed with the FEC. Sprinkle's graphic displays of this information will help users to see how campaigns are being funded, and users will be able to review the data based on average contribution amount, geographic concentration, and individual versus organizational support. Sprinkle's platform will allow users to tailor their searches for candidates and build lists of candidates they wish to track or support. (d) Sprinkle will display only aggregated campaign finance data. Sprinkle's website will show the numbers of contributors that support a particular candidate, the total amount of funds the candidate has raised, the geographic distribution or concentration of contributors, the candidate's average contribution amount, and the relative proportion of	

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WEBSITE ACTIVITIES		
	individual contributions as a percentage of total contributions received. The aggregated data that Sprinkle will display will not allow users to obtain identifiable information about any individual contributor or enable political committees or others to engage in fundraising activity. (e) Sprinkle will host a page for each federal candidate with a registered authorized campaign committee, which will enable users to obtain additional information about candidates. Candidate pages will include biographical information, the candidate's positions on issues, and other information that may be helpful to users. Sprinkle will create the scaffolding for the candidate pages, which will also share a common look and feel, and Sprinkle will populate each page with publicly available information such as the candidate's partisan affiliation, fundraising results, and status as an incumbent or challenger. Candidates will be able to amend this information and provide additional information to better enable users to make informed decisions. In providing such information, candidates will be subject to limits imposed by Sprinkle, such as character limits for quotes or biographical information. (f) Sprinkle will not allow candidates to add any content to their pages that is for any purpose other than enhancing the quality and accuracy of the information Sprinkle provides to its users. For example, candidates will not be allowed to add	

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WEBSITE ACTIVITIES		
	any content that solicits contributions through events or any contribution mechanisms other than Sprinkle's platform. (g) Each candidate page will include a link allowing users to make contributions to the candidate. Sprinkle will partner with Stripe, Inc., a commercial payment processor, to provide all contribution processing services. Sprinkle itself will not process any contributions, deposit funds into a merchant account in its name, or forward contributions to candidates, but will rely on Stripe to provide all such services. Neither Sprinkle nor Stripe will exercise any direction or control over any user's choice of recipient candidates. (h) Sprinkle will deduct a fee from each contribution to cover all costs that Sprinkle and Stripe incur in providing their services to users, including all fees and costs of financial institutions involved in the transaction, and to provide a reasonable profit to both Sprinkle and Stripe. The fee will be approximately 10% of each contribution; Sprinkle and Stripe will determine the exact amount in a commercially reasonable manner, consistent with market conditions and regardless of a candidate's political affiliation. Stripe will deduct the fee from each contribution before forwarding the remainder of the funds to the recipient candidate. Sprinkle and Stripe will pay all fees and costs to participating financial institutions. Neither Sprinkle nor Stripe, in performing services for Sprinkle, will contract to provide any service to candidates' authorized committees.	

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WEBSITE ACTIVITIES		
	(i) The FEC opined that companies that process contributions as a service to contributors without receiving compensation from the recipient political committees are not making contributions because the companies are not providing any services to the recipient political committees. In addition, when companies that provide contribution processing services also provide contributors with tools to gather information about and to evaluate potential recipient candidates, the provision of such information is a corollary of creating a web platform through which users can identify political committees and transmit contributions. (j) Users' funds will be transmitted only at their own request and not pursuant to negotiated agreements with political committees. Because the user fees that Sprinkle will collect are for the benefit of the contributors, not of the recipient political committees, such fees do not relieve the recipient political committees of a financial burden they would otherwise have had to pay for themselves. Accordingly, neither Sprinkle's services nor its fees are contributions to the recipient political committees. (k) In addition, allowing candidates to add content to their candidate pages was permissible. They could do so only to the extent that the content would enhance the quality and accuracy of the information. Sprinkle would also impose specific limits on the candidate's ability to edit their candidate pages, such as character limits for quotes or biographical information. This limitation would be imposed	

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WEBSITE ACTIVITIES		
	as a service to its users to help them identify the candidates they wish to support. (l) The FEC also opined that Sprinkle's proposed business model will not be an impermissible sale or use of FEC data. FECA prohibits any information copied from FEC reports from being sold or used by any person for the purpose of soliciting contributions or for commercial purposes, other than using the name and address of any political committee to solicit contributions from such committee. 52 U.S.C. §30111(a)(4); 11 C.F.R. §104.15(a). In enacting this prohibition, Congress was concerned about protecting the privacy of the generally very public-spirited citizens who may make a contribution to a political campaign or a political party. 117 Cong. Rec. S30057 (daily ed. Aug. 5, 1971) (statement of Senator Bellmon). (m) Sprinkle proposes to display certain aggregated campaign finance data on candidates, including average contribution amount, geographic concentration of donor support, and individual versus organizational support. None of the aggregated data will allow users or others to access identifiable information about any particular donor or enable political committees or others to engage in fundraising activity. Thus, because Sprinkle's proposed use of contributor data would not be used to solicit contributors, Sprinkle's proposal would not violate the sale or use restrictions of FECA.	

ACTIVITY	FEDERAL ELECTION CAMPAIGN ACT OF 1971, AS AMENDED ("FECA")	INTERNAL REVENUE CODE OF 1986, AS AMENDED ("I.R.C.")
WEBSITE ACTIVITIES		
	FIRST AMENDMENT LIMITATIONS ON DISCLOSURE AND REPORTING REQUIREMENTS FOR ONLINE ADS 17. (a) In Washington Post v. McManus, 944 F.3d 506 (4th Cir. 2019), the Fourth Circuit upheld the trial court's issuance of a preliminary injunction against enforcement of the Maryland Online Electioneering Transparency and Accountability Act. The Act required social media sites and news sites to self-publish information about the political ads they ran and make records about those ads available for state inspection. (b) The purpose of the Act was to stymie Russian threats to Maryland's democratic processes, and to combat attempts by other foreign governments and their nationals to funnel money to Super PACs to influence state elections. (c) The Act imposed a series of duties on online platforms that ran paid political ads. The Act defined online platforms as: Any public-facing website, web application, or digital application, including a social network, ad network, or search engine, that: (i) has 100,000 or more unique monthly United States visitors or users for a majority of months during the immediately preceding 12 months; and	

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WEBSITE ACTIVITIES		
	(ii) receives payment for qualifying paid digital communications. Election Law §1-101(dd-1). (d) An online platform that agrees to place a qualifying paid digital communication (an "ad") must compile information about the transaction that includes the buyer's identity and the total amount paid for the ad. The platform must post this information, in searchable format, within 48 hours of the purchase, and place it in a clearly identifiable location on the online platform's website. The information must remain on the platform's website for at least one year after the general election to which it relates. Election Law §13-405(b). Noncompliance with either the Act's publication or inspection requirements is grounds for the Maryland Attorney General to seek injunctive relief to require removal of the ad. Election Law §13-405.1(b)(1)-(2). Failure to comply with the injunction is punishable by criminal penalties. Election Law §13-405.1(b)(4). (e) The Act defined qualifying paid digital communication as any electronic communication that: (i) is campaign material; (ii) is placed or promoted for a fee on an online platform; (iii) is disseminated to 500 or more individuals; and (iv) does not propose a commercial transaction. Election Law §1-101(ll-1). (f) The online platform must also preserve a digital copy of the ad, and maintain records containing the following information:	

ACTIVITY	FEDERAL ELECTION CAMPAIGN ACT OF 1971, AS AMENDED ("FECA")	INTERNAL REVENUE CODE OF 1986, AS AMENDED ("I.R.C.")
WEBSITE ACTIVITIES		
	(i) the candidate or ballot measure to which the ad relates and whether it supports or opposes that candidate or ballot issue; (ii) the dates and times that the ad was first disseminated and last disseminated; (iii) an approximate description of the geographic locations where the ad was disseminated; (iv) an approximate description of the audience that received or was targeted to receive the ad; and (v) the total number of impressions generated by the ad. (vi) These records must be maintained for one year after the general election and must be turned over to the State Board of Elections on request. Election Law §13-405(c). (g) The Act required online platforms to provide ad buyers with a way of notifying them when an ad they are seeking to place comes within the statutory definition of a qualifying paid digital communication. Election Law §13-405(a)(3). The Act put the onus on ad buyers to provide the notice to the platform at the time they place the ad, Election Law §13-405(a)(1), and to supply the platform with the information it will need to comply with both the Act's requirements, Election Law §13-405(d)(1). The platform did not incur any duties to publish information on its website or make records	

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WEBSITE ACTIVITIES		
	available for state inspection unless and until the buyer provided the notice. Election Law §13-405(b)(1) and (c)(1). (h) The court applied exacting scrutiny and held that the Act did not have a substantial relation between the important government interest of deterring foreign interference in elections and the information required to be disclosed. The absence of a substantial relation caused a number of violations of the First Amendment. (i) First, the Act is a content-based regulation on speech that singles out campaign-related speech for regulatory attention. When the government seeks to favor or disfavor certain subject-matter because of the topic at issue, it compromises the integrity of our national discourse and risks bringing about a form of soft censorship. (j) Second, the Act singles out political speech. Because our democracy relies on free debate as the vehicle of dispute and the engine of electoral change, political speech occupies a distinctive place in First Amendment law. (k) Third, the Act compels speech through the posting requirement within forty-eight hours of purchase, and the requirement to maintain the information on the website for at least one year after the general election. It also compels speech through the inspection requirement. The Act's publication and inspection requirements force elements of	

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WEBSITE ACTIVITIES		
	civil society to speak when they otherwise would not have done so. (l) Furthermore, the fact that the Act compels third-parties to disclose certain identifying information regarding political speakers implicates protections for anonymous speech. Requiring the press to disclose the identity or characteristics of political speakers is a problematic step. When the government enlists the press to disclose the sources of political speech, potentially exposing those speakers to identification and harassment, First Amendment protections and values come into play. (m) A core problem with the Act is that it makes certain political speech more expensive to host than other speech because compliance costs attach to the former and not the latter. When election-related political speech brings in less cash or carries more obligations than all the other advertising options, there is much less reason for platforms to host such speech. Platform-based campaign finance regulations make it financially irrational for platforms to carry political speech when other, more profitable options are available. Platform-based campaign finance regulations create freestanding legal liabilities and compliance burdens that independently deter hosting political speech. The plaintiffs have claimed that they would have to acquire new software for data collection; publish additional web pages; and disclose proprietary pricing models. Faced with this	

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WEBSITE ACTIVITIES		
	headache, there is good reason to suspect that many platforms would simply conclude: Why bother? (n) The court noted that the First Amendment guards against any action of the government that might prevent the free and general discussion of public matters. When the onus for disclosure is placed on platforms, the court hazards giving the government the ability to accomplish indirectly via market manipulation what it cannot do through direct regulation: control the available channels for political discussion. (o) The court also pointed out that the Act intrudes into the functions of editors and forces news publishers to speak in a way they would not otherwise. Because the integrity of the newsroom does not readily permit mandated interaction with the government, the First Amendment applies in full force to all news, comment, and advertising. (p) In addition, the inspection requirement not only compels the plaintiffs to turn over information to state regulators, it also brings the state into an unhealthy entanglement with news outlets. The core problem with the inspection requirement is that it lacks any readily discernable limits on the ability of government to supervise the operations of the newsroom. (q) The court then held that the Act failed exacting scrutiny. The Act did little to further its chief objective of combatting foreign meddling in the state's elections. First, foreign	

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WEBSITE ACTIVITIES		
	nationals rarely relied on paid content to try to influence the electorate. Rather, Russian influence was achieved primarily through unpaid posts on social media. The Act leaves this primary mechanism completely unaddressed. Second, the Act failed to regulate even the narrow band of paid content used by foreign nationals. Of the small percentage of foreign-placed ads that reached Maryland voters, the vast majority did not urge people to choose a certain candidate or support a specific ballot initiative. Rather, their chief focus was to rouse passions on divisive questions such as those of race or gun rights. They were not campaign material under the Act and were not affected by the Act. (r) In addition, the state provided little evidence of justify applying the Act to the press. The state failed to identify a single foreign-sourced paid political ad that ran on a news site, whether in 2016 or any other time. Furthermore, the Act was too broad because it failed to distinguish between platforms large and small. The Act sweeps the spectrum of websites, covering both *The Washington Post* and *Carroll County Times*, as well as their equivalents in every industry. The Act thus kicks in no matter how susceptible a website may be to foreign meddling or how influential it has been in a given election cycle. See also MUR 7210 (Frank Durkalski), Concurring Statement of Commissioner Lee E. Goodman ("[I]n over 40 years of enforcing the Act's disclaimer requirements, the	

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WEBSITE ACTIVITIES		
	Commission has never held a press entity legally responsible for disclaimers in its own content or publication of paid ads. The Commission's approach has conformed to the Act which as a general rule holds the person who makes an expenditure legally responsible for the legal compliance of her expenditure.") (footnote omitted). FEC RULE FOR DISCLAIMERS FOR PUBLIC COMMUNICATIONS ON THE INTERNET 18. (a) On December 1, 2022, the FEC adopted final rules for disclaimers on public communications on the Internet effective March 1, 2023. Federal Election Commission, Internet Communication Disclaimers and Definition of "Public Communication," 87 F.R. 77,467 (Dec. 19, 2022) (the "Internet Disclaimer Rule"). On December 14, 2023, the FEC adopted final rules effective March 1, 2024 that expand regulation of paid online advertisements to cover express advocacy messages that are placed or promoted for a fee on another person's website, digital device, application, or advertising platform. Federal Election Commission, Technological Modernization, 89 F.R. 196 (Jan. 2, 2024) (the "Revised Internet Disclaimer Rule"). (b) Prior law required a disclaimer for public communications: (i) made by a political committee; (ii) that expressly advocate for the election or defeat of a clearly identified federal candidate; (iii) that solicit contributions to a political committee; (iv) placed on a political committee's	

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WEBSITE ACTIVITIES		
	website available to the general public; or (v) on substantially similar unsolicited emails sent to more than 500 recipients by a political committee. 52 U.S.C. §30120(a); 11 C.F.R. §110.11(a); Preamble to Final Rules of Federal Election Commission on Internet Communications, 71 F.R. 18,589, 18,592 (April 12, 2006). (c) For political messages disseminated via the Internet, only advertisements placed for a fee on another person's website were public communications subject to regulation. Preamble to Final Rules of Federal Election Commission on Internet Communications, 71 F.R. 18,589, 18,594 (April 12, 2006). Internet activities engaged in by individuals and groups, acting independently or in coordination with candidates, were excluded from the definition of contribution and expenditure if the individuals or groups were not compensated for their Internet activities. However, public communications under 11 C.F.R. §100.26 funded by individuals and groups were expressly regulated even if the individual or group was not compensated for its activities. 11 C.F.R. §§100.94(e) and 110.155(e); see also FEC Advisory Opinion 2008-10 (costs incurred by an individual in creating an ad were covered by the Internet exemption from the definition of expenditure so long as the creator was not also purchasing TV airtime for the ad he or she created); MUR 6729 (Checks and Balances for Economic Growth, Inc.), First General Counsel's Report, at 6 (Aug. 6, 2014) (nonprofit corporation's production costs to produce a political video disseminated for free on YouTube.com were	

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WEBSITE ACTIVITIES		
	exempt from regulation and were not contributions or expenditures subject to independent expenditure reporting). (d) Internet communications containing express advocacy that were disseminated for free were excluded from the definition of regulated public communications. However, Internet communications containing express advocacy or soliciting contributions were regulated if they were placed for a fee on another person's website. 11 C.F.R. §100.26. (e) The Internet Disclaimer Rule revises the definition of public communication to include "communications placed for a fee on another person's website, digital device, application, or advertising platform." 11 C.F.R. §100.26. This definition applies to communications in the form of paid ads on websites, and paid ads disseminated by, on, or through, or that rely on the connectivity of, the Internet, including social media networks, streaming platforms, mobile applications, and wearable devices. This definition does not cover text messages. Internet Disclaimer Rule, 87 F.R. at 77,470-71; see also FEC Advisory Opinion 2022-19 (short-code text messages are not public communications subject to the disclaimer requirements). (f) The Revised Internet Disclaimer Rule revises the definition of public communication to include communications over the Internet that are "placed or promoted for a fee on another person's website, digital device, application, or advertising platform. A public	

ACTIVITY	FEDERAL ELECTION CAMPAIGN ACT OF 1971, AS AMENDED ("FECA")	INTERNAL REVENUE CODE OF 1986, AS AMENDED ("I.R.C.")
WEBSITE ACTIVITIES		
	communication is promoted for a fee if a payment is made to a website, digital device, application, or advertising platform in order to increase the circulation, prominence, or availability of the communication on that website, digital device, application, or advertising platform." 11 C.F.R. §100.26; 89 F.R. at 210. (g) The Internet Disclaimer Rule adds a new Section 110.11(c)(5) that sets forth the disclaimer requirements for Internet public communications. An Internet public communication is any public communication over the Internet placed for a fee on another person's website, digital device, application, or advertising platform. 11 C.F.R. §110.11(c)(5)(i). This language parallels the definition of public communication under 11 C.F.R. §100.26. (h) The Revised Internet Disclaimer Rule expands the definition of Internet public communication to include any public communication over the Internet that is placed or promoted for a fee on another person's website, digital device, application, or advertising platform. 11 C.F.R. §110.11(c)(5)(i); 89 F.R. at 210. Again, this language parallels the definition of public communication under 11 C.F.R. §100.26. (i) For example, if a political committee posts a video solicitation for free on a social media platform and pays the platform to boost the video's viewership, the video is both a	

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WEBSITE ACTIVITIES		
	public communication and an Internet public communication. 89 F.R. at 211. (j) The revised definitions do not apply to communications if the speaker's only costs are those to create the communication or to place or promote it using a forum that he or she controls to establish his or her own audience. 89 F.R. at 211. Accordingly, staffing, technology, and design costs incurred to create express advocacy messages that are disseminated for free on the Internet, whether on an organization's own website or a free social media platform, are not regulated as public communications, contributions, expenditures, independent expenditures, coordinated communications, and in-kind contributions. (k) A public communication and an Internet public communication do not include communications in which: (i) an individual is paid to create or share political content; or (ii) individuals make decisions about the content to share with their own audiences. 89 F.R. at 211. (l) For example, if a political committee posts a video soliciting contributions on a social media site for free and then pays an individual to post the video on that individual's social media page to share with that individual's followers, the video is neither a public communication nor an Internet public communication. The same result applies if the political committee pays an individual to create and post a communication for the individual's audience. In both	

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WEBSITE ACTIVITIES		
	situations, the individual would be communicating with the individual's own followers who have sought out such communications. 89 F.R. at 211. Accordingly, payments to influencers who redisseminate a person's or organization's messages for free on social media platforms are not regulated as public communications. (m) The content of the disclaimer depends on who authorized and paid for the advertisement. If a candidate, an authorized committee of a candidate, or an agent of either, pays for and authorizes the public communication, then the disclaimer must state that the communication "has been paid for by the authorized political committee." 52 U.S.C. §30120(a)(1); 11 C.F.R. §110.11(b)(1). If a public communication is paid for by someone else, but is authorized by a candidate, an authorized committee of a candidate, or an agent of either, then the disclaimer must state who paid for the communication, and that the ad is authorized by the candidate, an authorized committee of the candidate, or an agent of either. 52 U.S.C. §30120(a)(2); 11 C.F.R. §110.11(b)(2). If the communication is not authorized by a candidate, an authorized committee of a candidate, or an agent of either, then "the disclaimer must clearly state the full name and permanent street address, telephone number, or World Wide Web address of the person who paid for the communication, and that the communication is not authorized by any candidate or candidate's committee. 52 U.S.C. §30120(a)(3); 11 C.F.R. §110.11(b)(3). Every disclaimer "must be presented in a	

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WEBSITE ACTIVITIES		
	clear and conspicuous manner, to give the reader, observer, or listener adequate notice of the identity of the person" that paid for the communication. A disclaimer is not clear and conspicuous if it is difficult to see, read, or hear, or if the placement is easy to overlook. 11 C.F.R. §110.11(c)(1). (n) The disclaimer requirement applies to any person that pays to place or promote an Internet public communication regardless of whether that person originally created, produced, or distributed it. 11 C.F.R. §110.11(c)(5)(ii). (o) The disclaimer for an Internet public communication must: (i) for communications with text or graphic components, include the required written disclaimer, such that the disclaimer can be viewed without the viewer taking any action; (ii) be of sufficient type size to be clearly readable by the recipient; a disclaimer that appears in letters at least as large as the majority of other text in the communication satisfies this requirement; and (iii) be displayed with a reasonable degree of color contrast between the background and the disclaimer's text; a disclaimer satisfies this requirement if it is displayed in black text on a white background, or if the degree of color contrast is no less than the color contrast between the background and the largest text used in the communication. 11 C.F.R. §110.11(c)(5)(iii)(A)-(C). (p) Any Internet public communication that contains text or graphic elements must include a written disclaimer, even if	

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WEBSITE ACTIVITIES		
	the communication also includes video or audio components. For example, an audio advertisement might be presented on a social media platform within a panel also containing a written description. Since the communication includes a text component, it must include a written disclaimer. Internet Disclaimer Rule, 87 F.R. at 77,474-75. (q) For an Internet public communication in which the disclaimer is displayed with a video, the disclaimer must be visible for at least four seconds and appear without the recipient taking any action. 11 C.F.R. §110.11(c)(5)(iii)(D). (r) A graphic or video advertisement may be accompanied by a caption that contains a link to additional information. The disclaimer must be visible in the graphic or video, or in the caption, without the viewer having to take any additional action beyond viewing or watching the advertisement, such as clicking on or hovering over a link, or opening a pop-up window. Internet Disclaimer Rule, 87 F.R. at 77,474-75. (s) For an Internet public communication with an audio component and no video, graphic, or text component, the disclaimer must be included within the audio component. The requirements of subparagraph (o) do not apply to these communications. 11 C.F.R. §110.11(c)(5)(iii)(E). (t) The disclaimer rules do not impose the stand-by-your-ad requirements that apply to radio, television, and cable advertisements. Under these requirements, the candidate must identify himself or herself, and state that he or she	

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WEBSITE ACTIVITIES		
	approved the message. Although similar audio and video ads are now transmitted online, including by streaming services, the FEC's statutory authority is limited to broadcast and cable. Internet Disclaimer Rule, 87 F.R. at 77,475. (u) The Internet Disclaimer Rule adds a new Section 110.11(g) that provides an adapted disclaimer alternative for internet public communications in which a full disclaimer cannot be included due to character or space constraints intrinsic to the advertising product or medium. An adapted disclaimer is permissible when the full disclaimer cannot be provided or would occupy more than 25% of the communication due to character or space constraints intrinsic to the advertising product or medium. 11 C.F.R. §110.11(g)(2). The FEC chose not to specify how to measure the percentage, such as by pixels, seconds, or characters, so that the rule remains flexible as new technologies develop, and that speakers may use the appropriate measurement for their communication. Internet Disclaimer Rule, 87 F.R. at 77,477. (v) An adapted disclaimer is a clear statement that the internet public communication is paid for, and that identifies the person or persons who paid for the Internet public communication using their full name or a commonly understood abbreviation or acronym by which the person or persons are known, which is accompanied by an indicator and a mechanism. 11 C.F.R. §110.11(g)(1)(i). An adapted	

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WEBSITE ACTIVITIES		
	disclaimer may be used for audio and video communications as well as text and graphic communications. (w) An indicator is any visible or audible element associated with an internet public communication that is presented in a clear and conspicuous manner and gives notice to persons reading, observing, or listening to the internet public communication that they may read, observe, or listen to a disclaimer. An indicator is not clear and conspicuous if it is difficult to see, read, or hear, or if the placement is easy to overlook. An indicator may take any form including, but not limited to, words, images, sounds, symbols, and icons. 11 C.F.R. §110.11(g)(1)(ii). (x) A mechanism is any use of technology that enables the person reading, observing, or listening to an internet public communication to read, observe, or listen to the disclaimer after no more than one action by that person. A mechanism may take any form including, but not limited to, hover-over text, hyperlinks to a landing page, pop-up screens, rotating panels, and scrolling text. 11 C.F.R. §110.11(g)(1)(iii). (y) The FEC regulations contain two exceptions to the disclaimer requirement that should apply to small item advertisements and communications for which disclaimers are impracticable. One example is brief videos such as five second paid video ads. First, disclaimers are not required for public communications placed on "[b]umper stickers, pins, buttons, pens, and similar small items upon which the	

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WEBSITE ACTIVITIES		
	disclaimer cannot be conveniently printed." 11 C.F.R. §110.11(f)(1)(i) (the "small items exception"). Second, disclaimers are not required for "[s]kywriting, water towers, wearing apparel, or other means of displaying an advertisement of such a nature that the inclusion of a disclaimer would be impracticable." 11 C.F.R. §110.11(f)(1)(ii) (the "impracticable exception"). See Interpretive Statement of Chairman Allen J. Dickerson and Commissioner James E. "Trey" Trainor, III Regarding REG 2011-02 (Internet Communication Disclaimers and Definition of "Public Communication"), at 6 (Dec. 1, 2022) ("The rationale for the impracticable and small item exceptions is constitutionally compelled: if there is a means of communication that exists in the commercial marketplace, political advertisers must be able to use it. A fundamental principle of advertising is that it is only effective if you meet your audience where they are – and political advertisers' audience is increasingly found on the internet. It follows that the Commission should encourage innovation in political advertising, rather than stifling it with disclaimer requirements geared at the more inflexible formats of the mid-to-late twentieth century. We are also constitutionally prohibited from imposing disclaimer requirements that would preclude a political speaker from using a particular advertising medium that is otherwise available to the public. As such, the impracticable and small item exceptions serve as backstops within our regulations and as necessary tools of constitutional avoidance, and they apply by extension to all	

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WEBSITE ACTIVITIES		
	media formats regulated by the Commission, including internet advertisements.") (footnote omitted). Concurring Statement of Commissioner Sean J. Cooksey on the Final Rule for Internet Communication Disclaimers, at 1 (Dec. 1, 2022) ("The final rule permits small and unconventional online ads for which a full disclaimer is unreasonably cumbersome to instead include an 'adapted declaimer' that maintains the integrity of the advertisement. Similarly, Commission regulations will maintain exemptions from disclaimer requirements for small-item advertisements and communications for which disclaimers are impracticable, such as with exceptionally short video clips. Even with the revised regulation's limited purview, these safeguards are critical to maintaining regulatory flexibility for political campaigning online.") (footnote omitted). For authorities that permit the use of these exceptions, see FEC Advisory Opinion 2002-9 (small item exception permitted for text messages containing 160 or fewer characters); FEC Advisory Opinion 1980-42 (small item exception permitted for concert tickets); First General Counsel's Report, at 6, MUR 1474 (Ad Hoc Committee Against Nazism and Anti-Semitism) (small item exception permitted for stickers); General Counsel's Report, at 2, MUR 2261 (Norris for Congress Committee) (small item exception permitted for wooden nickels disseminated by a candidate's campaign at a county fair); First General Counsel's Report, at 2, MUR 3092 (Kasten for Senate	

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WEBSITE ACTIVITIES		
	Committee) (small item exception permitted for 3½ inch by 2 inch magnet); First General Counsel's Report, at 6, MUR 5583 (Christian Interactive Network) (small item exception permitted for stickers). For authorities that reject the use of these exceptions, see FEC Advisory Opinion 1978-33 (small item exception rejected for newspaper advertisements); General Counsel's Report, at 4-5, MUR 960 (Life Amendment PAC) (small item exception rejected for handbills); General Counsel's Report, at 5, MUR 3086 (Willamette Citizen) (impracticable and small item exceptions rejected for newspaper advertisements); Factual and Legal Analysis, at 3, MUR 4416 (Hamilton for Congress) (impracticable and small item exceptions rejected for fliers and printed shopping bags); Statement of Reasons of Vice Chairman Darryl R. Wold and Commissioners Lee Ann Elliott, Danny McDonald, David M. Mason, and Karl J. Sandstrom, MUR 4791 (Ryan for Congress) (impracticable and small item exceptions rejected for football schedules); Factual and Legal Analysis, at 4, MUR 7471 (Mary Bono for Congress) (small item exception rejected for doorhangers). See also Yes on Prop B, Committee in Support of the Earthquake Safety & Emergency Response Bond v. City & County of San Francisco, 440 F. Supp. 3d 149 (N.D. Cal. 2020) (court applied exacting scrutiny and struck down as unduly burdensome a disclaimer requirement that when printed in 14-point font, takes up 100% of the most common	

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WEBSITE ACTIVITIES		
	and economical ads printed in Chinese language newspapers, and 75 to 80% of a 5" by 5" ad; court also struck down disclaimer requirement that takes up 75 to 100% of digital/audio advertisements 30 seconds or less in length; disclaimer requirement was especially troubling because the burden is greatest for some of the most cost-effective types of advertising; First Amendment cannot tolerate a law that forecloses certain forms of political speech and requires Yes on Prop B to expend precious funds on more expensive advertising or forgo its political expression altogether; court upheld disclaimer requirement that takes up 31 to 33% of a 5" by 10" ad or occupies approximately 35% of a typical 14" by 22" horizontal window sign, and approximately 35 to 38% of one side of a typical 5.5" by 8.5" palm card), appeal dismissed as moot, 826 Fed. App'x 648 (Mem) (9th Cir. 2020). See generally Richard L. Hasen, "Deep Fakes, Bots, and Siloed Justices: American Election Law in a 'Post-Truth' World," 64 St. Louis University Law Review 535, 557-59 (Summer 2020) ("Today, with so much campaign and political activity moving online, there is no good argument that government regulation which is generally applicable to campaign activity should not apply to online campaign activity. The world is topsy-turvy when online political activity requires the least disclosure but needs it the most.") ("[M]odern campaign finance disclosure law should be updated so that it requires the disclosure of the funders behind coordinated and well-funded attempts to influence	

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WEBSITE ACTIVITIES		
	elections via social media, even if the attempted persuasion comes in the form of bot-generated private messages lacking express advocacy.") ("The spending threshold for mandated disclosure would count not only the funds paid to the platforms for paid services but also expenditures using software engineers, consultants, or others in an effort to influence elections via social media. Those who fall within the reporting threshold would have to certify under penalty of perjury to the website or social media platform they wish to use that they have made the required disclosures to the government before they may use social media resources on the platform. The law would exempt those who can credibly demonstrate that they would face the threat of harassment if their identities were disclosed and media corporations when they are engaged in journalistic enterprises.") (footnotes omitted). Brendan Fischer, "What the Mueller Report Tells Us About Campaign Finance Law and Foreign Interference," Sludge (April 20, 2019) ("Under current law, outside groups only have to report spending on digital ads when they expressly advocate for or against candidates. Most of Russia's ads didn't meet that standard. Even those ads that Mueller characterized as 'overtly oppos[ing] the Clinton Campaign' – like one that pictured Clinton and read 'If one day God lets this liar enter the White House as a president, that day would be a real national tragedy' – may not be considered express advocacy by the FEC. If ads like this one had been run on TV, however, they would have been subject to legal	

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WEBSITE ACTIVITIES		
	disclosure requirements because they would have qualified as 'electioneering communications.' Electioneering communications are currently defined by the FEC as broadcast – but not digital – ads run near an election that name a candidate, and are targeted to that candidate's voters, even if they don't expressly tell viewers to vote for or against a candidate.") (available at https://readsludge.com/2019/04/20/what-the-mueller-report-tells-us-about-campaign-finance-law-and-foreign-interference/). 19. (a) In Campaign Legal Center v. Federal Election Commission, 106 F.4th 1175 (D.C. Cir. 2024), the court rejected the FEC's interpretation of the exemption for unpaid communications over the Internet under the 2006 rulemaking at 71 F.R. 18,589 (April 12, 2006), 11 C.F.R. §§100.26, 100.94, and 100.155. In a 2 to 2 decision, the FEC dismissed a complaint brought by Campaign Legal Center alleging that Correct the Record, a Super PAC supporting Hillary Clinton's candidacy for President in the 2016 election, unlawfully made coordinated expenditures for the costs of polling, computers, and staff time, which ultimately became inputs to communications not placed for a fee on the Internet, but were not themselves communications or lacked a sufficiently close connection to communications not placed for a fee on the Internet. If the exemption were to apply to these expenditures, political committees could avoid coordinated expenditures by posting a message on	

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WEBSITE ACTIVITIES		
	Facebook that purports to rely on that expenditure as an input cost to the post. (b) The Campaign Legal Center acknowledged that certain input costs antecedent to unpaid Internet communications, such as video production or domain services expenses for videos to be posted online, came within the exemption. (c) In its dismissal of the complaint, the controlling Republican commissioners adopted a bright-line rule that exempted from regulation all money spent on input costs to produce a communication not placed for a fee on the Internet. The exemption covered staff time, computer usage, and electricity, as well as additional overhead and other expenses, such as travel, media training, and the services of consultants, graphic designers, videographers, actors, and other specialists. The controlling Republican commissioners also refused to require Correct the Record to separately account for and allocate overhead expenses across Internet communications and other activities. (d) In finding that the FEC acted contrary to law in its dismissal of the Campaign Legal Center complaint, the court reasoned as follows: On [the two controlling Republican commissioners'] logic, an entity that blogs or tweets in coordination with a campaign arguably exempts all of its overhead expenses from regulation under FECA − no matter that some portion of those overhead expenses is entirely unrelated to the	

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WEBSITE ACTIVITIES		
	organization's internet-related activities. Taken to its logical conclusion, that suggests a political action committee wholly devoted to coordinating its spending "for the purpose of influencing an[ ] election for Federal office,'' 52 U.S.C. §30101(9)(A)(i), need not disclose any portion of its rent, internet bills, or inventory costs as campaign contributions, so long as it spends a fractional portion of its time tweeting about its activities. Likewise, the implication seems to be that, if a political committee staffer spends some of her time blogging online, that committee can evade any requirement to report her salary as a campaign contribution. . . . . The internet exemption was never intended as a FECA-swallowing loophole enabling political committees to launder all their coordinated expenditures via unpaid internet postings. The commissioners who crafted it sought to 'ensure that political committees properly finance and disclose their Internet communications.' 71 Fed. Reg. at 18589. Indeed, the Commission explicitly noted in summarizing the exemption that "a political committee's purchase of computers for individuals to engage in Internet activities for the purpose of influencing a Federal election" remains a regulated "expenditure" by that political committee. *Id*. at 18606. By the same token, the Commission explained, an entity makes an "in-kind 'contribution'" by "providing software and Internet access for the specific purpose of enabling its employees to	

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WEBSITE ACTIVITIES		
	influence a Federal election through political Internet activities." Id. [106 F.4th at 1191-92] (e) The court remanded the case to the FEC to determine which input costs are sufficiently direct costs of unpaid Internet content that come within the Internet exemption, and which input costs are only tangentially related to unpaid Internet content and therefore do not come within the Internet exemption. Hopefully, the FEC carefully considers whether the costs of copyright, dissemination, production, software, and staff time are input costs that come within the Internet exemption. PROVISION OF CYBERSECURITY SERVICES 20. (a) In FEC Advisory Opinion 2018-11, the FEC opined that Microsoft's proposal to offer a package of enhanced online account security services at no additional charge and on a nonpartisan basis to its election-sensitive customers is permissible and would not result in a prohibited in-kind corporate contribution. (b) As part of its "AccountGuard" initiative, Microsoft plans to provide a package of enhanced online account security protections for election-sensitive users of O365 cloud-based productivity software, and Outlook.com and Hotmail.com products, on a nonpartisan basis for no additional cost. Election-sensitive customers include federal, state, and local candidate committees; national and state political party	

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WEBSITE ACTIVITIES		
	committees; campaign technology vendors; and think tanks and democracy advocacy non-profits. (c) Once enrolled in AccountGuard, participants will have access to three services. First, they will receive documentation, webinars, and potentially in-person cybersecurity trainings tailored to the specific needs of the campaign community. Second, Microsoft will investigate, confirm, and notify participants if their accounts have been targeted or breached by a nation-state actor. To provide this service, Microsoft will use its existing threat intelligence division that tracks hackers who may interfere with customers' use of Microsoft's products or breach Microsoft's systems. Third, Microsoft will provide users of AccountGuard with email and telephone technical support to assist in securing online accounts and remediating any breaches. (d) The FEC approved the proposal because Microsoft would be providing its services based on commercial, rather than political considerations, in the ordinary course of business, and not merely for promotional consideration or to generate goodwill. Microsoft proposed to offer its services to protect its brand reputation, which would be at risk of severe and long-term damage if the accounts of its election-sensitive customers were hacked, and to obtain valuable data about online security threats.	

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WEBSITE ACTIVITIES		
	See also FEC Advisory Opinion 2012-31 (AT&T established a lower rate structure for political committees based on the volume of text messaging transactions AT&T expected to process, the dollar amounts of those transactions, and the volume of work the transactions would generate for AT&T's call centers, as well as for protecting AT&T's brand relationship with those customers; since these considerations represented commercial, rather than political, concerns, the lower rate structure did not result in a prohibited in-kind corporate contribution). 21. (a) In FEC Advisory Opinion 2018-12, the FEC addressed the permissibility of Defending Digital Campaigns, Inc. ("DDC), a Section 501(c)(4) organization, of providing cybersecurity services free of charge or at a reduced charge to all active, registered national party committees, all active, registered federal candidate committees, and to think tanks and other public policy focused nongovernmental organizations ("NGOs"), such as the Truman Center for National Policy and the Hudson Institute. (b) Following the 2016 elections, the Belfer Center for Science and International Affairs at Harvard Kennedy School instituted the Defending Digital Democracy Project, co-led by former campaign managers of Republican and Democratic presidential campaigns and cyber and national security experts, to recommend strategies, tools, and technology to protect democratic processes and systems from cyber and information attacks. The bipartisan group	

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WEBSITE ACTIVITIES		
	produced a report, "The Cybersecurity Campaign Playbook," designed to provide campaigns with simple, actionable guidance to secure their systems. To that end, Defending Digital Democracy Project's founding members formed DDC to: (i) create secure, nonpartisan forums for sharing information between campaigns, political parties, technology providers, law enforcement, and other government agencies to detect cyber threats and facilitate effective responses to those threats; and (ii) provide campaigns and political parties with knowledge, training, and resources to defend themselves from cyber threats. (c) In addition to the national party committees, DDC proposed to make its services available to candidate committees that satisfy one of the following requirements: (i) a House candidate's committee that has at least $50,000 in receipts for the current election cycle, and a Senate candidate's committee that has at least $100,000 in receipts for the current election cycle; (ii) a House or Senate candidate's committee for candidates who have qualified for the general election ballot in their respective elections; or (iii) any presidential candidate's committee whose candidate is polling above five percent in national polls.	

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WEBSITE ACTIVITIES		
	(d) DDC will proactively reach out to eligible committees in a consistent manner and offer the same suite of services to all eligible committees in a given race. (e) DDC proposes to engage in the following activities: (i) DDC proposes to create information sharing systems, such as list serves and bulletins, to allow campaigns, political parties, government agencies, and private sector entities to anonymously share information on malicious email addresses, IP addresses, and other intelligence on cyber threats targeting campaigns and elections. DDC would operate as an information sharing and analysis organization serving as a streamlined, nonpartisan clearinghouse to pool and monitor intelligence about cyber threats on an anonymous basis, facilitate cooperation with the appropriate government agencies, and provide advice and assistance in the case of a breach. For this service, DDC would not charge the private sector entities, government agencies, or eligible committees; (ii) DDC intends to operate a cybersecurity hotline, at no charge, for eligible committees. The hotline would allow eligible committees to receive advice or coaching, and to identify new and emergency cybersecurity threats in order to notify the proper government agencies if necessary; (iii) DDC plans to offer free cybersecurity boot camps – trainings covering core cybersecurity issues – as well as free	

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WEBSITE ACTIVITIES		
	advanced cybersecurity training and certification courses to eligible committees' leadership and information technology staff. DDC may host these programs at central locations and provide free or discounted transportation and lodging for eligible committees' staff to attend. DDC may recruit cybersecurity professionals to speak at such trainings as volunteers and contract with cybersecurity firms to provide advanced training and certification courses; (iv) DDC would like to facilitate free on-site visits to eligible committees by cybersecurity professionals who would provide basic training or general assistance. Under one option, cybersecurity professionals would provide such training and assistance as volunteers on unpaid leave or while on paid leave under their employers' existing policies. Under another option, DDC would establish partnerships with cybersecurity firms that would agree to provide paid leave to their employees for the on-site training and assistance; (v) DDC plans to form retainer agreements with digital security vendors to provide free or reduced-cost incident response services by digital security firms, allowing eligible committees to contact such vendors during threatening cyber events including phishing attacks and the receipt of suspicious emails. DDC would also like to form similar agreements with brand monitoring services, which identify fake websites that imitate legitimate federal candidates or parties, monitor the Internet for fraudulent or unauthorized	

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WEBSITE ACTIVITIES		
	committees posing as eligible committees, and notify the eligible committees of harmful behavior; and (vi) DDC plans to partner with technology companies (such as Google and Microsoft) to customize those companies' existing software for federal candidates and parties in order to enhance their cybersecurity, and also negotiate partnerships with those companies to secure free or discounted licenses for both customized and noncustomized cybersecurity-related software for eligible committees. DDC would act as an intermediary between the software providers and eligible committees to ensure that licenses are provided on a fair and equal basis to all eligible committees, but the actual software license agreements would be between the providers and the eligible committees. DDC staff would assist eligible committees in installing the software and educating staff on the proper use of the software. Likewise, DDC would provide similar services acting as an intermediary in contracts between providers and eligible committees for cybersecurity-related hardware. (f) In light of the demonstrated, currently enhanced threat of foreign cyberattacks against party and candidate committees, the FEC approved DDC's proposed activity. The FEC concluded that the current threat of foreign cyberattacks presents unique challenges to FEC enforcement of 52 U.S.C. §30121, and that this highly unusual and serious threat militates in favor of granting DDC's request. Under 52 U.S.C. §30121, foreign nationals are prohibited from	

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WEBSITE ACTIVITIES		
	making contributions, expenditures, donations, or disbursements in connection with federal, state, and local elections. The FEC's approval was conditioned on DDC's commitment not to accept any donations from foreign nationals. (g) In addition, approval was conditioned on DDC's public disclosure of all donations, and going forward, disclosure of new donations by the first day of the month following when they were received. These disclosures had to appear prominently on DDC's website and include: (i) the true source of the funds as required of contributions by 11 C.F.R §110.4; and (ii) the categories of information required for contributions to authorized committees of candidates for federal office found in 11 C.F.R §104.3(a)(3). In addition, approval was conditioned on DDC's commitment to accept donations only from individuals, foundations, and entities that have elected C corporation status for federal income tax purposes. The two Republican commissioners, Vice Chairman Petersen and Commissioner Hunter, approved the Advisory Opinion, but did not condition their approval on these disclosure requirements and funding restrictions. (h) Finally, any material decline in the external threat environment – as judged, for example, by the U.S. Intelligence Community or U.S. national security officials – would affect the continuing applicability of the Advisory Opinion. That environment includes but is not limited to: (i) the demonstrated, enhanced threat of foreign cyberattacks	

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WEBSITE ACTIVITIES		
	against party and candidate committees; and (ii) the widespread technical inability of candidate committees to protect themselves against foreign cyberattacks. In particular, if Congress were to amend FECA to address the provision of cybersecurity to party or candidate committees by government or nongovernment entities, the Advisory Opinion would not apply to cybersecurity that committees are able to obtain in practice from those government or nongovernment entities pursuant to such legislation. 22. (a) In FEC Advisory Opinion 2019-12, the FEC approved the proposal of Area 1 Security, Inc. to offer cybersecurity services to federal candidates and political committees under a low or no cost pricing tier that Area 1 offers to all qualified customers. Because Area 1 would offer these services in the ordinary course of business and on the same terms and conditions as offered to similarly situated nonpolitical clients, the FEC concluded that the proposal would not result in prohibited in-kind corporate contributions. (b) Area 1 preemptively tracks phishing threats and stops them before they cause damage. Area 1 generally employs a pricing strategy named "Pay Per Phish" under which the client pays $10 per phish that the company catches, subject to a certain cap or maximum. Area 1 also offers its clients negotiable fixed-term contracts ("Enterprise License Agreements") that charge an upfront, fixed fee. The Enterprise License Agreement includes a little or no cost pricing tier that offers certain qualified clients a fixed cost of	

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WEBSITE ACTIVITIES		
	between zero and $1,337 per year. To qualify for this tier, organizations must have fewer than 5,000 full-time employees, and provide Area 1 with a significant opportunity to improve its research and development initiatives. Clients using Area 1's anti-phishing services under the little or no cost pricing tier include nonprofits, humanitarian organizations, and startups. (c) Area 1 plans to offer its anti-phishing cybersecurity services to federal candidates and political committees on a nonpartisan basis within its little or no cost pricing tier. Qualified federal candidates and political committees, those with fewer than 5,000 employees and that provide a significant opportunity for research and development, would be charged a flat fee of $1,337 per year. (d) Area 1 expects to gain essential, highly valuable research and development benefits from servicing federal candidates and committees because they are uniquely and specifically targeted by foreign cyber actors, and that Area 1's proposal would enhance federal candidates' and political committees' security against foreign interference in their elections. (e) The FEC, relying on FEC Advisory Opinion 2018-11 issued to Microsoft, approved Area 1's proposal. Because Area 1 proposes to charge qualified federal candidates and committees the same as it charges its qualified nonpolitical clients, its proposal is consistent with Area 1's ordinary business practices. Therefore, its proposal would not result	

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WEBSITE ACTIVITIES		
	in Area 1 making prohibited in-kind corporate contributions to federal candidates and political committees. <u>PROVISION OF EMAIL SERVICES</u> 23. (a) In FEC Advisory Opinion 2022-14, the FEC approved Google's proposal to offer a pilot program to test new Gmail design features free of charge on a nonpartisan basis to authorized candidate committees, political party committees, and leadership PACs ("Eligible Participants"). The new features related to Google's spam filtering of emails from bulk senders to Gmail addresses. Spam filtering allows spam to be placed automatically into a user's spam folder, rather than directly into the user's inbox. (b) Google's terms of service and policies, including its spam filter policies, apply to emails from all senders regardless of political affiliation. Gmail employs a number of filters to determine whether an email is classified as spam, and one of the most important factors is user preference because user actions teach Gmail how best to sort the received email based on preferences. For example, if a user moves a message to the spam folder, future emails from the sender generally are filtered to that user's spam folder, and if a user adds a sender to the user's contact list, future messages from that email address generally are placed in the user's inbox. (c) Google also provides information to bulk senders on how to maximize deliverability, both publicly available in the	

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WEBSITE ACTIVITIES		
	form of Bulk Sender Guidelines establishing steps bulk senders may take to improve their deliverability, and privately through Postmaster Tools, an account associated with a particular sender's domain that any bulk sender may create to access data and diagnostics regarding the sender's email campaign. Information provided in Postmaster Tools includes data and diagnostics regarding the reputation of a sender's domain and IP address, as well as the rate at which a sender's emails pass various authentication standards. As with the email platform, Gmail provides this information without charge. (d) Eligible Participants included in the pilot program ("Pilot Participants") would be used to test two new features of Gmail's spam filtering. First, Pilot Participants would be used to test a feature whereby bulk emails sent by the Pilot Participants to Gmail users would not be detected by Gmail's spam detection algorithms; instead, whether bulk emails are classified as spam would be determined based on direct feedback from the user. The first email from each sender to a particular user would display a prominent notification placed by Gmail asking the user whether the user wished to continue receiving messages from the sender. If the user opted out in that message or a subsequent message, future emails from that sender to a particular user would be placed in the spam folder. The subsequent message would not contain the original prominent	

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WEBSITE ACTIVITIES		
	notification but would be subject to a requirement on the sender to allow one-click unsubscribe in the sender's emails. (e) Second, Pilot Participants would receive the Inboxing Rate associated with their emails, expressed as a percentage. A Pilot Program Participant could view in Postmaster Tools information about the volume of messages that land in Gmail users' inboxes vs. the spam folder. Google would gather feedback from both senders and users on the efficacy and ease of use to consider whether the features tested in the pilot are commercially feasible, either for this group or other groups of senders. Google may consider expanding the features to other bulk senders, such as government agencies, entities related to government agencies or involved in providing government services, senders of class-action notices, and nonprofit organizations, depending on the feedback. (f) Google stated that the purpose of the pilot is to test whether the features enable users to receive more wanted email from bulk senders without degrading the user experience. Google proposes to start the pilot program with Eligible Participants rather than other industries for testing because it is able to verify entities registered with the FEC; the upcoming election season and its expected increase and sustained engagement by an identifiable group of bulk senders; the bulk senders' strong incentive to keep users engaged for a long period; and the ease of participant	

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	feedback for this group of senders because of the concentrated group of email vendors. (g) The FEC approved the proposed pilot program because Google would offer the program at its usual and normal charge and in the ordinary course of its business. Google provides Gmail services, including any feature related to spam filtering, for free to all its users, including bulk senders, without any obligation on the user to purchase other services, even as part of the pilot program. Although the spam filter functionality would be modified for the Pilot Participants since they would have their bulk emails filtered for spam by the new user preference mechanism, rather than by algorithms applying additional filters, and receive more detailed information about their Inboxing rate, these would only be modifications to Google's free spam filtering service. Google provides this service to all users, rather than a service that customarily has a separate charge. Google does not offer a premium spam filtering service, nor would the Pilot Participants, or any other Gmail users, be obligated to purchase any additional service from Google because of the pilot program. In addition, Google states that it has a regular business practice of providing similar resources without charge and working to enhance the experience of its users. The modifications of spam filtering services for the Pilot Participants would thus appear to be in keeping with Google's ordinary business practices.	

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WEBSITE ACTIVITIES		
	(h) Furthermore, although Google would be modifying its service only for certain political committees and would not include other entities in the pilot program, Google would be doing so for commercial, rather than political reasons. In FEC Advisory Opinion 2018-11 (Microsoft Corporation), the FEC concluded that Microsoft may offer political committees a program of enhanced online security at no charge because doing so would protect its brand reputation and allow it to obtain valuable data on security threats. The program would be offered to political committees on a nonpartisan basis, Microsoft faced a particularly high threat of damage to its brand reputation given the public scrutiny on their political clients in the upcoming elections, and Microsoft would provide the service to all similarly situated entities, including political committees and election sensitive nonprofit organizations and vendors. (i) Here, the modifications available to Pilot Participants would serve Google's commercial interests in protecting its brand reputation and obtaining valuable data on how to enhance its product. The pilot program would be provided on a nonpartisan basis to Pilot Participants that pose unique threats and opportunities compared with other entities. Google proposes to start the pilot program with Eligible Participants rather than other industries for testing because it is able to verify entities registered with the FEC; the upcoming election season and its expected increase and sustained engagement by an identifiable group of bulk	

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	senders; the bulk senders' strong incentive to keep users engaged for a long period; and the ease of participant feedback for this group of senders because of the concentrated group of email vendors. As a result, Pilot Participants raise unique issues regarding Google's brand reputation given the upcoming elections and public scrutiny on Pilot Participants. (j) Moreover, based on the results of the feedback of users in the program, Google may extend the program to other entities, including government agencies, entities related to government agencies or involved in providing government services, senders of class-action notices, and nonprofit organizations.	

A GUIDE TO ELECTION YEAR ACTIVITIES OF SECTION 501(C)(3) AND 501(C)(4) ORGANIZATIONS

ACTIVITY	FEDERAL ELECTION CAMPAIGN ACT OF 1971, AS AMENDED ("FECA")	INTERNAL REVENUE CODE OF 1986, AS AMENDED ("I.R.C.")
CAMPAIGN ACTIVITIES OF SECTION 501(c)(3) ORGANIZATION'S DIRECTORS, OFFICERS, AND EMPLOYEES		
	1. (a) A corporation cannot compensate an employee while volunteering for a campaign, other than compensation for bona fide vacation or other earned leave time. 11 C.F.R. §100.54(c); FEC Advisory Opinion 2000-1 (law firm's grant of leave at one-half normal salary if the firm found the leave appropriate would be an impermissible in-kind corporate contribution); FEC Advisory Opinion 1976-70. (b) If an employee is paid on an hourly or salaried basis and is expected to work a particular number of hours per period, no prohibited corporate contribution results if the employee volunteers for a campaign during what would otherwise be a regular work period, provided that the taken or released time is made up or completed by the employee within a reasonable time. 11 C.F.R. §100.54(a); FEC Advisory Opinion 1984-43. (c) If an employee has discretion over his or her time, the employee can volunteer for a campaign during working hours as long as the employee's services do not decrease as a result of the volunteer activity. FEC Advisory Opinion 1984-43. (d) No prohibited corporate contribution results when an employee volunteers for a campaign during what would otherwise be normal working hours if the employee is paid on a commission or piecework basis, or is paid only for work actually performed and the employee's time is	1. Directors, officers, and employees of a Section 501(c)(3) organization can create a nonconnected PAC, and otherwise participate in campaigns in their individual capacities as long as they do not use the organization's resources, or act as the organization's agents. The Section 501(c)(3) organization should: (a) publish written guidelines in its employee manual, and redistribute the guidelines at the beginning of each election cycle; (b) require employees who wish to participate in campaign activities during normal working hours to take vacation time or leave without pay; (c) prohibit employees from using the organization's letterhead in campaign activities; (d) prohibit employees from displaying support of or opposition to a candidate at its offices, such as hanging posters and distributing campaign literature and videos; and (e) prohibit employees from using the organization's support services for campaign activities, such as computer, duplicating, e-mail, facsimile, messenger, and telephone, unless the organization otherwise permits personal use with prompt reimbursement. For example,

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CAMPAIGN ACTIVITIES OF SECTION 501(c)(3) ORGANIZATION'S DIRECTORS, OFFICERS, AND EMPLOYEES		
	considered his or her own to use as the employee sees fit. 11 C.F.R. §100.54(b). (e) To avoid a prohibited corporate contribution, the compensation that the corporation pays to an employee who is a candidate must: (i) result from bona fide employment independent of the candidacy; (ii) be exclusively in consideration of services performed; and (iii) not exceed the amount that the corporation would pay to a similarly qualified person for the same work for the same period of time. FEC Advisory Opinion 1980-115; FEC Advisory Opinion 1979-74; FEC Advisory Opinion 1977-68. 2. (a) When an employee takes unpaid leave to work on a campaign, a corporation cannot continue to pay for the employee's fringe benefits, such as health and life insurance and retirement, unless the corporation has a general policy to provide benefits for a brief period after termination of employment. The prohibition does not apply to fringe benefits for employees on annual leave, or other leave time that the employee takes under a contract and that the employee can use for any purpose. 11 C.F.R. §114.12(c)(1); Explanation for Part 114, H.R. Doc. No. 95-1a, at 117 (Jan. 12, 1977). See also FEC Advisory Opinion 2014-15 (Randolph-Macon College granted full-time faculty member unpaid leave of absence beginning Aug. 8, 2014 to be the Republican	the organization can require an employee to use a personal cellular phone for campaign activities conducted on personal time (e.g., lunch hour) at the organization's offices. G.C.M. 39,414 (Sept. 25, 1985). 2. A Section 501(c)(3) organization cannot coordinate its employees' activities to enable them to attend political events, such as fundraisers, and vote for candidates taking positions favorable to the organization. Rev. Rul. 67-71, 1967-1 C.B. 125; G.C.M. 39,811 (Feb. 9, 1990). 3. (a) The 2002 CPE Text contains the following discussion of attribution of the acts of individual officials to a Section 501(c)(3) organization: "Officials acting in their individual capacity may be identified as officials of the organization so long as they make it clear that they are acting in their individual capacity, that they are not acting on behalf of the organization, and that their association with the organization is given for identification purposes only. If it is not made clear that the official's association with the organization is given only for purposes of identification, the individual's acts may be attributed to the IRC 501(c)(3) organization since the organization typically acts through its officials. Actions and communications by the officials of the organization that are of the same character and method as authorized acts and communications of the organization will be attributed to the organization. Therefore, when an official of an IRC

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CAMPAIGN ACTIVITIES OF SECTION 501(c)(3) ORGANIZATION'S DIRECTORS, OFFICERS, AND EMPLOYEES		
	candidate for House of Representatives from Virginia's 7th District; college continued fringe benefits for which member was eligible before the leave, including medical, life, and disability insurance, and tuition reduction, exchange, and remission benefits; college continued to provide its financial insurance subsidy for the benefits, and required member to timely pay his portion of the premiums; college would continue benefits for duration of the unpaid leave, which would end when member returned to work or resigned to take office, depending on the outcome of the election, but in no event later than Jan. 1, 2015; payment of continued benefits was part of other earned leave time since payment was generally approved for those granted leaves of absence under a pre-existing and long-standing policy generally applicable to all employees, and not one created for this particular situation; continuation of benefits was a form of conditional compensation for faculty; college did not create a benefits policy to give member an advantage as a federal candidate-employee; college had a policy of granting sabbaticals for a variety of purposes and generally approving payment of fringe benefits during those sabbaticals; policy showed that college provided member with the same treatment that it afforded other employees granted leave for other reasons, and other faculty members who took sabbaticals for nonpolitical purposes); FEC Advisory Opinion 2014-14 (same opinion for Democratic candidate); FEC Advisory Opinion 1992-3 (corporation had an	501(c)(3) organization endorses a candidate somewhere other than in the organization's publications or at its official functions, and the organization is mentioned, it should be made clear that such endorsement is being made by the individual in his or her private capacity and not on the organization's behalf. The following language would serve as a sufficient disclaimer: 'Organization shown for identification purposes only; no endorsement by the organization is implied."' 2002 CPE Text, at 364. The position of the 2002 CPE Text may conflict with Example 2 in IRS Publication 1828, Tax Guide for Churches and Religious Organizations, at 8 (Aug. 2015) (discussed in Paragraph 7 below). See also T.A.M. 200446033 (June 15, 2004) ("[W]hen officials of a section 501(c)(3) organization engage in political activity at official functions of the organization or through the organizations' official publications, the actions of the officials are attributed to the section 501(c)(3) organization. Use of the section 501(c)(3) organization's financial resources, facilities or personnel is also indicative that the actions of the individual should be attributed to the organization."). (b) In Rev. Rul. 2007-41, 2007-1 C.B. 1421, 1422-23, the IRS deleted the following language from Fact Sheet 2006-17 (Feb. 2006) in its discussion of individual activity by organization leaders: "To avoid potential attribution of their comments outside of organization functions and

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CAMPAIGN ACTIVITIES OF SECTION 501(c)(3) ORGANIZATION'S DIRECTORS, OFFICERS, AND EMPLOYEES		
	established unpaid leave policy for all approved, unpaid leave situations of paying fringe benefits for thirty-one days from any employee's last day of work; since the benefits policy was pre-existing and not created to benefit an employee-candidate, and the period during which payments would be made was brief, the payment of benefits was a form of compensation and part of other earned leave time); FEC Advisory Opinion 1976-70. Cf. FEC Advisory Opinion 2015-14 (DePauw University, a Section 501(c)(3) organization, provided academic credit, and a stipend for travel and basic subsistence expenses, to a student who was offered an eight week unpaid internship in the summer of 2015 with Hillary Clinton's Presidential campaign committee; college credit received for work on political campaigns was not prohibited compensation to the student so long as the program was administered in a nonpartisan manner and consistent with accepted accreditation standards generally applicable to institutions of higher education; stipend did not constitute a prohibited contribution by the University to the campaign committee because the stipends were provided to students for bona fide educational objectives and not for the provision of personal services to federal campaigns; all students who accepted unpaid internships in nonprofit, government, or start-up organizations were eligible to apply for stipends, and the University reviewed each application to assess the educational benefit of the internship; whether the stipend	publications, organization leaders who speak or write in their individual capacity are encouraged to clearly indicate that their comments are personal and not intended to represent the views of the organization." The IRS also used similar language in IRS Publication 1828, Tax Guide for Churches and Religious Organizations, at 8 (Aug. 2015). (c) The officers of a Section 501(c)(3) organization should not conduct campaign activities (i) on stationery containing the letterhead of the organization or signed by the organization's officers in an official capacity; (ii) in the organization's publications, websites, mass media advertisements, and programs produced by the organization; and (iii) at the organization's official events. 4. The 2002 CPE Text takes the following position on FEC Advisory Opinion 1984-12 (see discussion of this Advisory Opinion in Paragraph 6 of the FECA column): "The prohibition against political campaign activity does not prevent an organization's officials from being involved in a political campaign, so long as those officials do not in any way utilize the organization's financial resources, facilities, or personnel, and clearly and unambiguously indicate that the actions taken or the statements made are those of the individuals and not of the organization. Whether the individuals are truly acting in their own capacity is an evidentiary question.

ACTIVITY	FEDERAL ELECTION CAMPAIGN ACT OF 1971, AS AMENDED ("FECA")	INTERNAL REVENUE CODE OF 1986, AS AMENDED ("I.R.C.")
CAMPAIGN ACTIVITIES OF SECTION 501(c)(3) ORGANIZATION'S DIRECTORS, OFFICERS, AND EMPLOYEES		
	was awarded to a student and the amount awarded did not depend on the number of hours the students worked, or the economic value of the work performed; rather the stipend was based on the demonstrated financial expenses of the student to complete a bona fide educational objective). (b) A corporate PAC can pay the employer's share of the cost of benefits, and the payment is an in-kind contribution by the PAC to the candidate. The employee can pay for the benefits from unreimbursed personal funds, and the payment is not a contribution by the employee to the candidate. 11 C.F.R. §114.12(c)(1). 3. A corporation can grant service credit for leave without pay if the corporation normally provides identical treatment to employees who take leave without pay for nonpolitical reasons. 11 C.F.R. §114.12(c)(2). 4. A corporation cannot reimburse an employee through a bonus, expense account, and any other form of compensation for the employee's campaign contributions. 11 C.F.R. §114.4(b)(1). 5. (a) In FEC Advisory Opinion 2004-8, the FEC addressed whether a corporation's payment of severance pay to an executive who terminated employment to become a candidate for the House of Representatives is a prohibited contribution. The applicable rule is that a third-party's	Unfavorable evidence would include any similarity of name between the IRC 501(c)(3) organization and the PAC, any excessive overlap of directors without a convincing explanation for the situation, and any sharing of facilities." 2002 CPE Text, at 366. 5. For individuals other than a Section 501(c)(3) organization's officers, such as employees and members, their actions are attributed to the organization if there is real or apparent authorization by the organization. In general, principles of agency apply in making this determination, and the "actions of employees within the context of their employment generally will be considered to be authorized by the organization. Acts of individuals that are not authorized by the IRC 501(c)(3) organization may be attributed to the organization if it explicitly or implicitly ratifies the actions. A failure to disavow the actions of individuals under apparent authorization from the IRC 501(c)(3) organization may be considered a ratification of the actions. To be effective, the disavowal must be made in a timely manner equal to the original actions. The organization must also take steps to ensure that such unauthorized actions do not recur. . . . For example, in G.C.M. 39,414 (Feb. 29, 1984), the political campaign activities of individual members were attributed to an IRC 501(c)(3) organization. The organization's publication stated that the organization would be sending members to work on the campaign, members identified

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CAMPAIGN ACTIVITIES OF SECTION 501(c)(3) ORGANIZATION'S DIRECTORS, OFFICERS, AND EMPLOYEES		
	payment of a candidate's expenses that are "personal use" expenses under 52 U.S.C. §30114 (formerly 2 U.S.C. §439a(b)(2)) is a contribution by the third-party unless the payment would have been made "irrespective of the candidacy." 11 C.F.R. §113.1(g)(6). The payment of employment-related compensation is a contribution unless: (i) the compensation results from bona fide employment that is genuinely independent of the candidacy; (ii) the compensation is exclusively in consideration of services provided by the employee as a part of this employment; and (iii) the compensation does not exceed the amount of compensation that would be paid to any other similarly qualified person for the same work over the same period of time. 11 C.F.R. §113.1(g)(6)(iii)(A)-(C). (b) The American Sugar Cane League ("ASCL"), a Louisiana nonprofit corporation, proposed a severance package for its President and General Manager of full salary for six months to one year with continuation of health insurance coverage for the same term. The President and General Manager had been in that position for approximately eleven years. The factors that ASCL historically used in deciding whether to grant a severance package, and the size of the package were: (i) the position held; (ii) the length of time employed; and (iii) an evaluation of job performance.	themselves as representing the organization, and officials made no effort to prevent the members' activities." 2002 CPE Text, at 365; see also PLR 200151060. See also Statement of Frances R. Hill, Professor of Law, University of Miami School of Law, Hearing on Protecting the Free Exchange of Ideas on College Campuses, Committee on Ways and Means Subcommittee on Oversight of the United States House of Representatives, at 5 (March 2, 2016) ("Issues raised by faculty status involve the scope of their authority as teachers. This does not give faculty members authority to use their classrooms to support or oppose clearly identified candidates for public office. Faculty may not use their classrooms to endorse or urge the election of particular candidates. Faculty members should not signal their support by displaying indicia of their personal political choices in their classrooms. Time spent with students in a classroom should focus on the material that students enrolled in the course to learn. Using a classroom for political campaigning when the faculty member is acting within the scope of his or her authority in the university could well be attributed to the university. A greater problem is that using class time for political campaigning means that class time is diverted from the exempt educational purpose of the university to the private, personal preferences of the faculty member.").

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CAMPAIGN ACTIVITIES OF SECTION 501(c)(3) ORGANIZATION'S DIRECTORS, OFFICERS, AND EMPLOYEES		
	(c) The severance package satisfied the first and second prongs of the exception to contribution status because ASCL had a regular business practice of providing severance packages to departing long-term executives and employees. Four of seven employees who terminated employment since the severance policy was instituted in 1987 received a severance package, and ASCL used relatively objective factors in deciding whether to offer a severance package. The package satisfied the third prong because certain board members in 2001, and the full board in 2004, considered the President's tenure and service, and determined that his employment with ASCL was most comparable to the most recently departed executive, a former vice-president with twenty-four years of service. The vice-president received one year of pay and a full panoply of benefits: one year of health benefits coverage, his company-owned computer, the option of purchasing his company-owned car for Blue Book value, and payment for his previously scheduled speaking engagement trip to Australia. The fact that the President was not offered the full range of benefits provided the vice-president was reflective of his shorter eleven year tenure. Finally, given the nature of organizations as small as ASCL, the lack of a written severance policy and the existence of some Board discretion in determining the size and scope of a severance package were not fatal to the conclusion that the package was compensation "irrespective of the candidacy." Finally, the fact that a severance package of similar size to	6. IRS Publication 1828, Tax Guide for Churches and Religious Organizations, at 8 (Aug. 2015), provides the following example of a religious leader acting individually and not on behalf of the religious organization: Example 1: Minister A is the minister of Church J, a section 501(c)(3) organization, and is well known in the community. With their permission, Candidate T publishes a full-page ad in the local newspaper listing five prominent ministers who have personally endorsed Candidate T, including Minister A. Minister A is identified in the ad as the minister of Church J. The ad states, 'Titles and affiliations of each individual are provided for identification purposes only.' The ad is paid for by Candidate T's campaign committee. Since the ad was not paid for by Church J, the ad is not otherwise in an official publication of Church J, and the endorsement is made by Minister A in a personal capacity, the ad doesn't constitute political campaign intervention by Church J. It is important to note that the IRS did not require other persons who were not religious leaders to provide endorsements in the ad. The IRS used a similar example in IRS Fact Sheet 2006-17, Example 3 (Feb. 2006), and Rev. Rul. 2007-41, Situation 3, 2007-1 C.B. 1421, 1422.

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CAMPAIGN ACTIVITIES OF SECTION 501(c)(3) ORGANIZATION'S DIRECTORS, OFFICERS, AND EMPLOYEES		
	the current proposal was discussed with influential board members in 2001 when there was no prospect of the President's future status as a federal candidate was additional evidence that ASCL's proposed package was compensation "irrespective of the candidacy." See also FEC Advisory Opinion 2014-15 (college's policy of liberally granting sabbaticals (including to both major party candidates in the same federal election for the House of Representatives), and generally approving continuation of benefits, including for those on sabbaticals for nonpolitical purposes, satisfied the requirements of 11 C.F.R. §113.1(g)(6)(iii)(A)-(C)); FEC Advisory Opinion 2014-14 (same); FEC Advisory Opinion 2011-27 (Section 501(c)(3) organization's severance payment of three months' salary to former executive director who was a candidate for U.S. House of Representatives was not a prohibited corporate contribution; organization would have made severance payment irrespective of candidacy; since 2007 organization provided severance packages to employees who were terminated involuntarily other than termination due to lost grant funding; former executive director received the same three month package that all other departing senior managers received); FEC Advisory Opinion 2006-13 (equity partner of law firm became a candidate for at-large seat in House of Representatives from Delaware; law firm's compensation plan is a hybrid formula that takes into account: (i) historical productivity levels of each equity partner; (ii) each equity	7. IRS Publication 1828, Tax Guide for Churches and Religious Organizations, at 8 (Aug. 2015), provides a second following example of a minister acting in his individual capacity: Example 2: Minister B is the minister of Church K, a section 501(c)(3) organization, and is well known in the community. Three weeks before the election, he attends a press conference at Candidate V's campaign headquarters and states that Candidate V should be reelected. Minister B doesn't say he is speaking on behalf of Church K. His endorsement is reported on the front page of the local newspaper and he is identified in the article as the minister of Church K. Because Minister B did not make the endorsement at an official church function, in an official church publication or otherwise use the church's assets, and did not state that he was speaking as a representative of Church K, his actions didn't constitute political campaign intervention attributable to Church K. The IRS also used this example in IRS Fact Sheet 2006-17, Example 5 (Feb. 2006), and Rev. Rul. 2007-41, Situation 5, 2007-1 C.B. 1421, 1422. It is important to note that the IRS did not require the minister to provide a disclaimer that the church does not endorse any party or candidate, and that the minister's affiliation with the church is for identification purposes only. The position of

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CAMPAIGN ACTIVITIES OF SECTION 501(c)(3) ORGANIZATION'S DIRECTORS, OFFICERS, AND EMPLOYEES		
	partner's participation in firm leadership and marketing that is not recognized in the productivity calculations; and (iii) each equity partner's role in generating revenue of the firm in the current year by originating and servicing clients during the year; so long as candidate is compensated in accordance with the firm's compensation plan, his compensation will satisfy the three criteria in 11 C.F.R. §113.1(g)(6)(iii); although compensation under (i) for the candidate will not be reduced during 2006 because of any reduced productivity in 2006, this type of compensation will be affected by the candidate's reduced 2006 productivity if he remains with the firm when compensation under (i) is reset in January 2007 for the next two year period); FEC Advisory Opinion 2004-17 (candidate for House of Representatives could provide part-time consulting services to a law firm and receive hourly compensation; compensation paid by law firm was not a contribution because the law firm paid the compensation irrespective of the candidacy); FEC Advisory Opinion 2000-1 (paid leave of half salary while employee was a candidate granted solely in employer's discretion was a prohibited corporate contribution). 6. Directors of a Section 501(c)(3) organization can establish a PAC in their individual capacities that is not connected to the organization. FEC Advisory Opinion 1984-12. In this Advisory Opinion, members of the board of directors of the American College of Allergists, Inc., a Section 501(c)(3)	these examples may conflict with the 2002 CPE Text (discussed in Paragraph 3(a) above). See also Ryan Burge, "Why Most Pastors Avoid Politics," The Wall Street Journal (May 26, 2022) ("[B]ecause lawmakers and the courts want to give religious organizations wide latitude when it comes to hiring and firing their clergy, most legislation that deals with employment discrimination includes a ministerial exception. Because of this carve-out in the law, if a religious leader is fired, there is very little legal recourse available to him or her. This precarious position means that clergy often shy away from being political from the pulpit, worried about angering a portion of their congregation that could oust them from their job.") (available at https://www.wsj.com/articles/why-most-pastors-avoid-politics-11653584104). 8. In Fact Sheet 2006-17 (Feb. 2006), the IRS provides the following examples of individual activity by organization leaders: (a) Example 3: President A is the Chief Executive Officer of Hospital J, a section 501(c)(3) organization, and is well known in the community. With the permission of five prominent healthcare industry leaders, including President A, who have personally endorsed Candidate T, Candidate T publishes a full page ad in the local newspaper listing

ACTIVITY	FEDERAL ELECTION CAMPAIGN ACT OF 1971, AS AMENDED ("FECA")	INTERNAL REVENUE CODE OF 1986, AS AMENDED ("I.R.C.")
CAMPAIGN ACTIVITIES OF SECTION 501(c)(3) ORGANIZATION'S DIRECTORS, OFFICERS, AND EMPLOYEES		
	organization, decided to form, in their individual capacities, a PAC, the Independent Allergists Political Action Committee. In finding this activity to be permissible, the FEC gave the following admonition: "The Act and regulations also preclude a corporation from providing any indirect contribution of anything of value to a nonconnected political committee. This requirement prohibits the College from engaging in conduct which favors or appears to favor IAPAC's solicitation activity. For example, it would be improper for the College to allow IAPAC to use its letterhead for solicitation and administrative purposes. It would also be improper for the College to charge IAPAC less than the normal and usual rate, as determined by the market price, for use of its membership list or to provide such list to IAPAC on an exclusive basis. Finally, neither the College nor IAPAC may assert a proprietary interest in control over use of the name Independent Allergists Political Action Committee, IAPAC, or the words 'Allergist' or 'Allergists' in the event another political committee were to adopt a similar name, or acronym, in whole or in part." See discussion of the IRS position on this Advisory Opinion in Paragraph 4 of the I.R.C. column. See also FEC Advisory Opinion 2021-7 (PAC Management Services LLC operated an online platform that enabled its individual clients to make contributions to political committees; the organization may permit individuals who work for corporations and trade associations, acting in their	the names of the five leaders. President A is identified in the ad as the CEO of Hospital J. The ad states, "Titles and affiliations of each individual are provided for identification purposes only." The ad is paid for by Candidate T's campaign committee. Because the ad was not paid for by Hospital J, the ad is not otherwise in an official publication of Hospital J, and the endorsement is made by President A in a personal capacity, the ad does not constitute campaign intervention by Hospital J. The IRS also used this example in Rev. Rul. 2007-41, Situation 3, 2007-1 C.B. 1421, 1422. (b) Example 4: President B is the president of University K, a section 501(c)(3) organization. University K publishes a monthly alumni newsletter that is distributed to all alumni of the university. In each issue, President B has a column titled "My Views." The month before the election, President B states in the "My Views" column, "It is my personal opinion that Candidate U should be reelected." For that one issue, President B pays from this personal funds the portion of the cost of the newsletter attributable to the "My Views" column. Even though he paid part of the cost of the newsletter, the newsletter is an official publication of the university. Because the endorsement appeared in an official publication of University K, it constitutes campaign intervention by University K. The IRS also used this example in Rev. Rul. 2007-41, Situation 4, 2007-1 C.B. 1421, 1422, and a

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CAMPAIGN ACTIVITIES OF SECTION 501(c)(3) ORGANIZATION'S DIRECTORS, OFFICERS, AND EMPLOYEES		
	personal capacities, to use the platform to solicit contributions); FEC Advisory Opinion 2000-20 (officers and employees of corporation, acting in their personal capacities, can establish nonconnected political committee). 7. In FEC Advisory Opinion 2007-10, the FEC addressed an employee's use of corporate assets. The principal campaign committee of Representative Silvestre Reyes planned to host a golf-tournament fundraiser in which individuals or political action committees sponsored each of eighteen holes. The campaign committee planned to recognize each sponsor at its hole. For individual contributors, the campaign committee would recognize the individual's corporate employer with a sign stating, "Hole sponsored by [Individual] [Title] of [Corporation's Name, Trademark, or Service Mark]." The individual would pay for the sponsorship, and the individual's employer would not reimburse him or her. The FEC opined that the campaign committee could not recognize the corporate employers. Neither a corporation nor its agents can use the corporation's names, trademarks, or service marks to facilitate the making of contributions to a federal political committee, and a federal political committee cannot knowingly accept or receive facilitated contributions. 11 C.F.R. §114.2(d)-(f)(1) and (4). FEC Advisory Opinion 2007-10. 8. The FEC has found that when corporate executives use corporate stationery without reimbursing the corporation, the	similar example in IRS Publication 1828, Tax Guide for Churches and Religious Organizations, Example 3, at 8 (Aug. 2015). See also Statement of Frances R. Hill, Professor of Law, University of Miami School of Law, Hearing on Protecting the Free Exchange of Ideas on College Campuses, Committee on Ways and Means Subcommittee on Oversight of the United States House of Representatives, at 6 (March 2, 2016) ("University administrators retain their personal right to become involved in political campaigns in their personal capacity. Delineating the personal capacity of a university president or the dean of a college requires specific action. If a senior administrator wishes to sign an endorsement of a specific candidate, the senior administrator should take care that the use of the university affiliation is accompanied by the disclaimer that the university's name is used solely for purposes of identifying the individual. See Revenue Ruling 2007-41, Situation 3. If a senior administrator writes an editorial in an official university publication urging that a particular candidate should be elected, that statement will be attributed to the university even if the president pays for that portion of the cost of producing the publication. See Revenue Ruling 2007-41, Situation 4. This example should be interpreted as requiring that a private action such as paying for the portion of the cost of the publication is an insufficient

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CAMPAIGN ACTIVITIES OF SECTION 501(c)(3) ORGANIZATION'S DIRECTORS, OFFICERS, AND EMPLOYEES		
	corporation makes an impermissible contribution. MURs 3066 (Bruce Vorhauer for U.S. Senate Committee); 1690 (Prudential-Bache Securities, Inc.);, and 1261 (American School Food Service Association). Under Citizens United, this holding is no longer valid to the extent it applies to independent expenditures. 9. (a) Employees and shareholders of a corporation can make "occasional, isolated, or incidental use" of corporate facilities for individual volunteer campaign activity. Occasional, isolated, or incidental use generally means: (i) when used by employees during working hours, an amount of activity that does not prevent him or her from completing the normal amount of work that the employee usually carries out during such work period; and (ii) when used by shareholders other than employees during the working period, such use does not interfere with the corporation in carrying out its normal activities. 11 C.F.R. §114.9(a)(1)(i)(ii). For example, employees and shareholders can use office phones to organize a campaign event on an incidental basis. The regulations provide a safe harbor for activity that does not exceed one hour per week, or four hours per month. 11 C.F.R. §114.9(a)(2)(i). (b) Employees and shareholders must reimburse the corporation only to the extent that the corporation's overhead or operating costs are increased. A corporation cannot condition the availability of its facilities on their	disavowal of a public endorsement. The university's disavowal should be as public as the endorsement."). (c) Example 6: Chairman D is the chairman of the Board of Directors of M, a section 501(c)(3) organization that educates the public on conservation issues. During a regular meeting of M shortly before the election, Chairman D spoke on a number of issues, including the importance of voting in the upcoming election, and concluding by stating, "It is important that you all do your duty in the election and vote for Candidate W." Because Chairman D's remarks indicating support for Candidate W were made during an official organization meeting, they constitute political campaign intervention by M. The IRS also used this example in Rev. Rul. 2007-41, Situation 6, 2007-1 C.B. 1421, 1423, and a similar example in IRS Publication 1828, Tax Guide for Churches and Religious Organizations, Example 4, at 8 (Aug. 2015). 9. When a church owns the house in which its minister lives, can the minister place a placard supporting a candidate on the front lawn, or conduct campaign activities from the house? Does it make a difference if the minister pays fair market rent for the house to the church? Similarly, when a church retains title to the automobile used by its minister for both church and personal purposes, can the

ACTIVITY	FEDERAL ELECTION CAMPAIGN ACT OF 1971, AS AMENDED ("FECA")	INTERNAL REVENUE CODE OF 1986, AS AMENDED ("I.R.C.")
CAMPAIGN ACTIVITIES OF SECTION 501(c)(3) ORGANIZATION'S DIRECTORS, OFFICERS, AND EMPLOYEES		
	being used for political activity, or on support for or opposition to any particular candidate or political party. 11 C.F.R. §114.9(a)(1). The employee's or shareholder's reimbursement is an in-kind contribution to the candidate for whom the employee or shareholder is volunteering. Accordingly, the campaign must report the contribution, and the contribution counts against the employee's or shareholder's contribution limit. (c) An employee's or shareholder's voluntary Internet activity (as defined in 11 C.F.R. §100.94 and described in Paragraph 10(b) below) on the employer's computer equipment in excess of one hour a week or four hours a month, and regardless of whether the activity is during or after normal work hours, is treated as occasional, isolated, or incidental use as long as: (i) the employee completes the normal amount of ordinarily expected work; (ii) the use does not increase the corporation's overhead or operating costs; and (iii) the activity is not performed under coercion by the employer. 11 C.F.R. §114.9(a)(2)(ii). (d) An employee or shareholder who makes more than occasional, isolated, or incidental use of corporate facilities for individual volunteer activity must reimburse the corporation within a commercially reasonable time for the normal and usual rental charge as defined in 11 C.F.R. §100.52(d)(2). 11 C.F.R. §114.9(a)(3). Normal and usual rental charge means the amount that would have been paid	minister affix a bumper sticker supporting or opposing a candidate? 10. Candidates and officeholders can serve on the governing bodies of Section 501(c)(3) organizations.

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CAMPAIGN ACTIVITIES OF SECTION 501(c)(3) ORGANIZATION'S DIRECTORS, OFFICERS, AND EMPLOYEES		
	for rent at the time of use. The employee's or shareholder's reimbursement is an in-kind contribution to the candidate for whom the employee or shareholder is volunteering. Accordingly, the campaign must report the contribution, and the contribution counts against the employee's or shareholder's contribution limit. (e) The exemption for an employee's or shareholder's occasional, isolated, or incidental use of corporate facilities does not apply to the employee's or shareholder's use of corporate personnel, such as administrative assistants and information technology personnel. Accordingly, a corporate supervisor can use corporate personnel to assist in the supervisor's volunteer campaign activity only if the personnel agree to do so without coercion. The fair market value of the time spent by corporate personnel on a campaign must be paid in advance by the campaign, the corporation's PAC, or an individual, to the corporation. 11 C.F.R. §114.2(f)(2)(i)(A). The advance payment is an in-kind contribution by the PAC or individual, and counts against their contribution limits. (f) An employee is generally prohibited from bundling contributions by collecting and forwarding checks to candidates when the employee is representing the corporation. 11 C.F.R. §110.6(b)(2)(ii); MUR 5390 (Federal Home Loan Mortgage Corp.); MUR 5020 (Gormley for	

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CAMPAIGN ACTIVITIES OF SECTION 501(c)(3) ORGANIZATION'S DIRECTORS, OFFICERS, AND EMPLOYEES		
	Senate Primary Election Fund). An important exception applies when the employee: (i) is expressly authorized by the candidate or the candidate's committee to engage in fundraising. An individual should obtain written authorization from the campaign to act as its representative; (ii) occupies a significant position within the candidate's campaign organization. Likely examples of a significant position are a chairperson of a major fundraising event or program, member of a national or regional fundraising committee, or a regional fundraising coordinator; (iii) does not exercise discretion or control over the contributions, which means that the contributor must make the check payable to the campaign. FEC Advisory Opinion 1987-29 and FEC Advisory Opinion 1986-4; and (iv) is not acting as a representative of an entity prohibited from making contributions, such as a corporation. 11 C.F.R. §110.6(b)(2)(i)(E). (g) Neither the corporation nor an employee acting on the corporation's behalf can facilitate the making of a contribution to a candidate, or a political committee other than the corporation's PAC. Facilitation means using corporate resources or facilities to engage in fundraising activities in connection with any federal election. 11 C.F.R.	

ACTIVITY	FEDERAL ELECTION CAMPAIGN ACT OF 1971, AS AMENDED ("FECA")	INTERNAL REVENUE CODE OF 1986, AS AMENDED ("I.R.C.")
CAMPAIGN ACTIVITIES OF SECTION 501(c)(3) ORGANIZATION'S DIRECTORS, OFFICERS, AND EMPLOYEES		
	§114.2(f)(1). Examples of facilitation are providing envelopes addressed to the campaign and stamps and other items that assist in transmitting contributions, and the failure to reimburse the corporation within a reasonable time for the use of corporate facilities. 11 C.F.R. §114.2(f)(2); FEC Advisory Opinion 2003-22. It is not facilitation for the corporation in a communication to its restricted class to solicit a contribution to a candidate or suggest a recommended contribution. 11 C.F.R. §114.2(f)(4)(ii). It is also not facilitation for the corporation in a communication to its restricted class to endorse a candidate, or to send follow-up reminders for pledged contributions that contain a notice that participation is voluntary. FEC Advisory Opinion 1996-1; FEC Advisory Opinion 1987-29. (h) Neither the corporation nor an employee acting on the corporation's behalf can use a corporate list of customers, clients, vendors, or others who are not in the restricted class to solicit contributions or distribute invitations to a fundraiser unless the corporation receives advance payment for the list's fair market value. 11 C.F.R. §114.2(f)(2)(i)(C). (i) An employee or shareholder who uses corporate facilities to produce materials must reimburse the corporation within a commercially reasonable time for the normal and usual charge for producing the materials in the commercial market. 11 C.F.R. §114.9(c).	

ACTIVITY	FEDERAL ELECTION CAMPAIGN ACT OF 1971, AS AMENDED ("FECA")	INTERNAL REVENUE CODE OF 1986, AS AMENDED ("I.R.C.")
CAMPAIGN ACTIVITIES OF SECTION 501(c)(3) ORGANIZATION'S DIRECTORS, OFFICERS, AND EMPLOYEES		
	10. (a) When an individual or a group of individuals, whether acting independently or in coordination with any candidate, authorized committee, or political party committee, engages in Internet activities for the purpose of influencing a federal election, neither of the following is a contribution or expenditure by that individual or group of individuals: (i) the individual's uncompensated personal services related to the Internet activities; or (ii) the individual's use of equipment or services for uncompensated Internet activities regardless of who owns the equipment and services. 11 C.F.R. §§100.94 (exemption from definition of contribution) and 100.155 (exemption from definition of expenditure). (b) The term "Internet activities" includes, but is not limited to: sending or forwarding electronic messages; providing a hyperlink or other direct access to another person's website; blogging; creating, maintaining, or hosting a website; paying a nominal fee for the use of another person's website; and other forms of communication distributed over the Internet. 11 C.F.R. §§100.94(b) and 100.155(b). (c) Equipment and services include, but are not limited to: computers, software, Internet domain names, Internet Service Provider (ISP), and any other technology that is used to provide access to or use of the Internet. 11 C.F.R. §§100.94(c) and 100.155(b); see also FEC Advisory Opinion 2008-10 (cost of creating an Internet communication comes within the exemption as long as the	

ACTIVITY	FEDERAL ELECTION CAMPAIGN ACT OF 1971, AS AMENDED ("FECA")	INTERNAL REVENUE CODE OF 1986, AS AMENDED ("I.R.C.")
CAMPAIGN ACTIVITIES OF SECTION 501(c)(3) ORGANIZATION'S DIRECTORS, OFFICERS, AND EMPLOYEES		
	creator is not also purchasing TV airtime for the ad he or she created). (d) Paragraph 10(a) also applies to any corporation that is wholly owned by one or more individuals, that engages primarily in Internet activities, and that does not derive a substantial portion of its revenues from sources other than income from its Internet activities. In addition, under Citizens United, in the absence of coordinated communications, corporations are free to engage in partisan Internet activities regardless of the number or identity of the corporation's shareholders. One potential limitation on corporate Internet activity is for corporations organized under foreign law, or controlled by foreign persons or entities. 11 C.F.R. §§100.94(d) and 100.155(d). (e) The following payments are not exempt from the definition of contribution or expenditure: (i) any payment for a public communication (as defined in 11 C.F.R. §100.26) other than a nominal fee; or (ii) any payment for the purchase or rental of an e-mail address list made at the direction of a political committee; or (iii) any payment for an e-mail address list that is transferred to a political committee. 11 C.F.R. §§100.94(e) and 100.155(e). For a discussion of the unavailability of the exemption for Internet activities for an individual's use of the processing power of Internet-enabled devices to mine cryptocurrencies	

ACTIVITY	FEDERAL ELECTION CAMPAIGN ACT OF 1971, AS AMENDED ("FECA")	INTERNAL REVENUE CODE OF 1986, AS AMENDED ("I.R.C.")
CAMPAIGN ACTIVITIES OF SECTION 501(c)(3) ORGANIZATION'S DIRECTORS, OFFICERS, AND EMPLOYEES		
	to benefit political committees, see Paragraph 13 of the FECA column for "Website Activities." For a discussion of the FEC proposed rulemaking for disclaimers on public communications on the Internet, see Paragraph 17 of the FECA column for "Website Activities." 11. (a) An important exemption to the definitions of coordinated communications, and contributions and expenditures, are communications by a corporation, such as a Section 501(c)(4) organization, to its restricted class. 52 U.S.C. §§30101(8)(B)(vi) and (9)(B)(v) and 30118(b)(2)(A) (formerly 2 U.S.C. §§431(8)(B)(vi) and (9)(B)(v) and 441b(b)(2)(A); 11 C.F.R. §114.3(a)(1) and (c). (b) The communications can expressly advocate for the election or defeat of a clearly identified candidate, or the candidates of clearly identified political parties. The communications can also suggest that members of the restricted class register with a particular party. The corporation can coordinate the communications with the candidate or political party. 11 C.F.R. §114.3(a)(1) and (c)(4). (c) Communications can be letters and publications, meetings, a members-only website, or phone banks. (d) Any printed material must provide the views of the corporation, and not be the republication or reproduction, in	

ACTIVITY	FEDERAL ELECTION CAMPAIGN ACT OF 1971, AS AMENDED ("FECA")	INTERNAL REVENUE CODE OF 1986, AS AMENDED ("I.R.C.")
CAMPAIGN ACTIVITIES OF SECTION 501(c)(3) ORGANIZATION'S DIRECTORS, OFFICERS, AND EMPLOYEES		
	whole or in part, of any broadcast, transcript, or tape, or any written graphic, or other form of campaign materials, prepared by the candidate, the candidate's campaign committee, or their authorized agents. A corporation may use brief quotations from speeches or other materials of a candidate that incorporate the candidate's position as part of the corporation's expression of its own views. 11 C.F.R. §114.3(c)(1)(ii). (e) If the corporation makes or circulates the communication beyond the corporation's restricted class, the communication would be an independent expenditure if it is not a coordinated communication, or a contribution if it is a coordinated communication. (f) Restricted class means a corporation's executive or administrative personnel and their families, and its stockholders and their families. The restricted class of an incorporated membership organization also includes its individual members and their families. 11 C.F.R. §114.1(c), (h), and (j). 12. Members of the House of Representatives cannot serve for compensation as an officer or board member of an association, corporation, or other entity. House Rule XXV §2(d). Members of the Senate can serve as an officer or board member of a Section 501(c) organization when the	

A GUIDE TO ELECTION YEAR ACTIVITIES OF SECTION 501(C)(3) AND 501(C)(4) ORGANIZATIONS

ACTIVITY	FEDERAL ELECTION CAMPAIGN ACT OF 1971, AS AMENDED ("FECA")	INTERNAL REVENUE CODE OF 1986, AS AMENDED ("I.R.C.")
CAMPAIGN ACTIVITIES OF SECTION 501(c)(3) ORGANIZATION'S DIRECTORS, OFFICERS, AND EMPLOYEES		
	Member serves without compensation. Senate Rule XXXVII §6(a)(1).	

A GUIDE TO ELECTION YEAR ACTIVITIES OF SECTION 501(C)(3) AND 501(C)(4) ORGANIZATIONS

ACTIVITY	FEDERAL ELECTION CAMPAIGN ACT OF 1971, AS AMENDED ("FECA")	INTERNAL REVENUE CODE OF 1986, AS AMENDED ("I.R.C.")
CONSEQUENCES OF VIOLATIONS		
	1. The FEC can bring enforcement proceedings for violations of FECA, otherwise known as "Matters Under Review," or "MURs." MURs are initiated by the FEC, or another person by filing a signed complaint under oath. 52 U.S.C. §30109(a)(1) (formerly 2 U.S.C. §437g(a)(1)); 11 C.F.R. §111.4. Within five days after the FEC receives the complaint, it must notify in writing any person alleged to have violated FECA. That person has fifteen days to demonstrate, in writing, that no action should be taken against that person based on the complaint. Id. The FEC's General Counsel may recommend whether the FEC should find that there is reason to believe a violation occurred. 11 C.F.R. §111.7. 2. (a) The FEC then decides whether to issue a "Reason To Believe" finding, which requires the affirmative vote of four of six voting commissioners that there is reason to believe a violation occurred. A Reason To Believe finding allows the FEC's Office of General Counsel to move forward in its investigation and gather additional evidence. At this stage, the parties can agree to a settlement known as a conciliation agreement. 52 U.S.C. §30109(a) (formerly 2 U.S.C. §437g(a)). (b) Generally, at the initial stage in the enforcement process the FEC will take one of the following actions with respect to a MUR: (i) find "reason to believe" a respondent has violated the Act; (ii) dismiss the matter; (iii) dismiss the matter with admonishment; or (iv) find "no reason to	1. (a) Code Section 4955 imposes a two-tiered excise tax on a Section 501(c)(3) organization's impermissible political expenditures. The initial tax is ten percent of the impermissible political expenditure. I.R.C. §4955(a)(1). If the violation is not corrected within the taxable period, the second tier tax is one hundred (100%) percent of the expenditure. I.R.C. §4955(b)(1). See also Samuel D. Brunson, "A New Johnson Amendment: Subsidy, Core Political Speech, and Tax-Exempt Organizations," 43 Yale Law & Policy Review 354, 370 (2025) ("[T]he Johnson Amendment prohibits a pastor from endorsing a candidate for city council in the middle of her sermon. But the excise tax, standing alone, would do very little to discourage that type of behavior because the additional marginal cost of a sentence in the middle of a sermon would be disappearingly small. The 100% excise tax would be virtually costless to the charity and to the donor.") (footnote omitted), (b) A political expenditure is any amount paid or incurred in any participation in, or intervention in (including the publication or distribution of statements), any political campaign on behalf of (or in opposition to) any candidate for public office. I.R.C. §4955(d)(1). The regulations provide that any expenditure that would cause an organization to be classified as an action organization by reason of Treas. Reg. §1.501(c)(3)-1(c)(3)(iii) is a political expenditure. Treas. Reg. §53.4955-1(c)(1).

ACTIVITY	FEDERAL ELECTION CAMPAIGN ACT OF 1971, AS AMENDED ("FECA")	INTERNAL REVENUE CODE OF 1986, AS AMENDED ("I.R.C.")
CONSEQUENCES OF VIOLATIONS		
	believe" a respondent has violated the Act. FEC Notice 2007-6, Statement of Policy Regarding Commission Action in Matters at the Initial Stage in the Enforcement Process, 72 F.R. 12,545-46 (March 16, 2007). (c) The Act requires that the FEC find "reason to believe that a person has committed, or is about to commit, a violation" of the Act as a predicate to opening an investigation into the alleged violation. 52 U.S.C. §30109(a)(2) (formerly 2 U.S.C. 437g(a)(2)). The FEC will find "reason to believe" in cases where the available evidence in the matter is at least sufficient to warrant conducting an investigation, and where the seriousness of the alleged violation warrants either further investigation or immediate conciliation. A "reason to believe" finding will always be followed by either an investigation or pre-probable cause conciliation. For example: ● A "reason to believe" finding followed by an investigation would be appropriate when a complaint credibly alleges that a significant violation may have occurred, but further investigation is required to determine whether a violation in fact occurred and, if so, its exact scope. ● A "reason to believe" finding followed by conciliation would be appropriate when the FEC is certain that a violation has occurred and the seriousness of the violation warrants conciliation.	Expenditures for voter registration, voter turnout, and voter education are treated as political expenditures under I.R.C. §4955(b)(2)(E) only if they violate the I.R.C. §501(c)(3) prohibition against campaign intervention. 2002 CPE Text, at 357; see also Treas. Reg. §1.527-6(b)(5) (tax on exempt function expenditures of I.R.C. §527(f) to which Section 501(c)(4) organizations are subject does not apply to nonpartisan voter registration and get-out-the-vote drives). For the definition of action organization, see Paragraphs 1(c) and 42(b) of the I.R.C. column for "Regulatory Provisions on Contributions, Expenditures, and Electioneering." (c) Correction means "recovering part or all of the expenditure to the extent recovery is possible, establishment of safeguards to prevent future political expenditures and where full recovery is not possible, such additional corrective action as is prescribed by the Secretary by regulations." I.R.C. §4955(f)(3). (d) The Section 501(c)(3) organization is not under any obligation to attempt to recover the expenditure by legal action if the action would in all probability not result in the satisfaction of execution on a judgment. Treas. Reg. §53.4955-1(e)(1). (e) The taxable period is the period beginning with the date on which the political expenditure occurs, and ending

ACTIVITY	FEDERAL ELECTION CAMPAIGN ACT OF 1971, AS AMENDED ("FECA")	INTERNAL REVENUE CODE OF 1986, AS AMENDED ("I.R.C.")
CONSEQUENCES OF VIOLATIONS		
	A "reason to believe" finding by itself does not establish that the law has been violated. When the FEC later accepts a conciliation agreement with a respondent, the conciliation agreement speaks to the FEC's ultimate conclusions. When the FEC does not enter into a conciliation agreement with a respondent, and does not file a suit, a Statement of Reasons, a Factual and Legal Analysis, or a General Counsel's Report may provide further explanation of the FEC's conclusions. FEC Notice 2007-6. (d) Pursuant to the exercise of its prosecutorial discretion, the FEC will dismiss a matter when the matter does not merit further use of FEC resources, due to factors such as the small amount or significance of the alleged violation, the vagueness or weakness of the evidence, or likely difficulties with an investigation, or when the FEC lacks majority support for proceeding with a matter for other reasons. For example, a dismissal would be appropriate when: ● The seriousness of the alleged conduct is not sufficient to justify the likely cost and difficulty of an investigation to determine whether a violation in fact occurred; or ● The evidence is sufficient to support a "reason to believe" finding, but the violation is minor. Id. (e) The FEC may also dismiss when, based on the complaint, response, and publicly available information, the FEC concludes that a violation of the Act did or very	on the earlier of the date of mailing of a notice of deficiency, and the date on which the excise tax is assessed. I.R.C. §4955(f)(4). 2. (a) Code Section 4955 imposes a two-tiered nondeductible excise tax on organization managers who knowingly agree to make an impermissible political expenditure. The initial tax is two and one-half percent of the expenditure, subject to a $5,000 cap per expenditure. I.R.C. §4955(a)(2) and (c)(2). Organization managers who refuse to agree to all or part of the correction are subject to a second tier tax of fifty percent of the expenditure, subject to a $10,000 cap per expenditure. I.R.C. §4955(b)(2). (b) Organization managers are jointly and severally liable for the excise tax. I.R.C. §4955(c)(1). An organization manager means any officer, director, or trustee of the organization (or individual having powers or responsibilities similar to those of officers, directors, or trustees), and with respect to any expenditure, any employee having authority or responsibility over the expenditure. I.R.C. §4955(f)(2). The regulations provide that the IRS will impose excise tax on a manager only if: (i) a tax is imposed on the organization; (ii) the manager knows that the expenditure to which he or she agrees is a political expenditure; and (iii) the agreement is willful and not due to reasonable cause. Treas. Reg. §53.4955-1(b)(1).

ACTIVITY	FEDERAL ELECTION CAMPAIGN ACT OF 1971, AS AMENDED ("FECA")	INTERNAL REVENUE CODE OF 1986, AS AMENDED ("I.R.C.")
CONSEQUENCES OF VIOLATIONS		
	probably did occur, but the size or significance of the apparent violation is not sufficient to warrant further pursuit by it. In this latter circumstance, the FEC will send a letter admonishing the respondent. For example, a dismissal with admonishment would be appropriate when: ● A respondent admits to a violation, but the amount of the violation is not sufficient to warrant any monetary penalty; or ● A complaint convincingly alleges a violation, but the significance of the violation is not sufficient to warrant further pursuit by the FEC. Id. (f) The FEC will make a determination of "no reason to believe" a violation has occurred when the available information does not provide a basis for proceeding with the matter. The FEC finds "no reason to believe" when the complaint, any response filed by the respondent, and any publicly available information, when taken together, fail to give rise to a reasonable inference that a violation has occurred, or even if the allegations were true, would not constitute a violation of the law. For example, a "no reason to believe" finding would be appropriate when: ● A violation has been alleged, but the respondent's response or other evidence convincingly demonstrates that no violation has occurred;	(c) The test applied in determining whether an organization manager agreed to an expenditure knowing that it is a political expenditure is as follows: (i) The manager has actual knowledge of sufficient facts so that, based solely upon these facts, the expenditure would be a political expenditure; (ii) The manager is aware that such an expenditure under these circumstances may violate the provisions of federal tax law governing political expenditures; and (iii) The manager negligently fails to make reasonable attempts to ascertain whether the expenditure is a political expenditure, or the manager is aware that it is a political expenditure. Treas. Reg. §53.4955-1(b)(4). 3. An organization manager can rely on the advice of counsel to avoid the excise tax. "An organization manager's agreement to an expenditure is ordinarily not considered knowing or willful and is ordinarily considered due to reasonable cause if the manager, after full disclosure of the factual situation to legal counsel (including in-house counsel) relies on the advice of counsel expressed in a reasoned written legal opinion that an expenditure is not a political expenditure under section 4955 (or that expenditures conforming to certain guidelines are not political expenditures)." Treas. Reg. §53.4955-1(b)(7). The advice of counsel defense does not

ACTIVITY	FEDERAL ELECTION CAMPAIGN ACT OF 1971, AS AMENDED ("FECA")	INTERNAL REVENUE CODE OF 1986, AS AMENDED ("I.R.C.")
CONSEQUENCES OF VIOLATIONS		
	● A complaint alleges a violation but is either not credible or is so vague that an investigation would be effectively impossible; or ● A complaint fails to describe a violation of the Act. If the FEC, with the vote of at least four Commissioners, finds that there is "no reason to believe" a violation has occurred or is about to occur with respect to the allegations in the complaint, the FEC will close the file and respondents and the complainant will be notified. FEC Notice 2007-6. (g) The FEC commissioners have split on the legal standard necessary for a "reason to believe" finding. One standard is whether there are sufficient facts to conclude that a violation may have occurred. A complaint must set forth sufficient facts, which, if proven true, would show a violation of FECA. Complaints not based on personal knowledge must identify a source of information that reasonably gives rise to a belief in the truth of the allegations made. Unwarranted legal conclusions from asserted facts or mere speculation will not be accepted as true. The complaint and response must be evenly weighted, but a complaint may be dismissed if it consists of factual allegations that are refuted with sufficiently compelling evidence provided in response to the complaint, or available from public sources, such as the FEC's reports database. MUR 4960 (Hillary Rodham Clinton for U.S. Senate Exploratory Committee), Statement	protect the organization because Section 4955(a)(1) imposes tax on it regardless of whether its actions were willful or due to reasonable cause. 2002 CPE Text, at 361. 4. The IRS can abate the initial excise tax on the organization and its managers if the organization or manager establishes to the satisfaction of the IRS that the political expenditure was not willful and flagrant, and the political expenditure was corrected. Treas. Reg. §53.4955-1(d). See Paragraph 8 below for the definition of willful and flagrant. 5. If a Section 501(c)(3) organization agrees to indemnify its managers for payment of the excise tax, whether by employment agreement, general policy applicable to all managers, certificate of incorporation, or by-laws, it must determine whether the indemnification is void as against public policy under the applicable state nonprofit organization statute, and applicable state campaign finance statute. The Section 501(c)(3) organization must also determine whether the organization's indemnification payments to managers for conduct arising out of or relating to a state or local election are treated as contributions subject to the limitations of the applicable state campaign finance statute. See generally Norwood P. Beveridge, "Does the Corporate Director Have a Duty Always to Obey the Law?," 45 DePaul Law Review 729 (1998).

ACTIVITY	FEDERAL ELECTION CAMPAIGN ACT OF 1971, AS AMENDED ("FECA")	INTERNAL REVENUE CODE OF 1986, AS AMENDED ("I.R.C.")
CONSEQUENCES OF VIOLATIONS		
	of Reasons of Commissioners David M. Mason, Karl J. Sandstrom, Bradley A. Smith, and Scott E. Thomas. (h) The other standard is whether there are sufficient facts to show that a violation had occurred. This standard appears to require a higher level of direct evidence of a violation of FECA. Inferences will not be drawn from circumstantial evidence presented in a complaint. In addition, general denials of a violation could be sufficient to close the matter. It is not enough for the Commission to believe that there is a reason to investigate whether a violation occurred. Instead, the Commission must identify the sources of information and examine the facts and reliability of the sources to determine whether they reasonably give rise to a belief in the truth of the allegations presented. MUR 5878 (Pederson 2006), Statement of Reasons of Vice Chairman Donald F. McGahn and Commissioners Caroline C. Hunter and Matthew S. Peterson. 3. (a) In the next stage of enforcement proceedings, known as the "Probable Cause To Believe" stage, the General Counsel prepares a brief for the commissioners setting forth the results of its investigation, and stating whether it recommends that the commissioners find probable cause that a violation occurred. (b) The respondent can then file a reply brief within fifteen (15) days of receipt of the General Counsel's brief. 52 U.S.C. §30109 (formerly 2 U.S.C. §437g(a)(3)); 11 C.F.R.	6. Since the manager's payment of the excise tax is not deductible by the manager, the organization's payment of the manager's tax through indemnification would be taxable to the manager without an offsetting deduction by the manager. I.R.C. §275(a)(6) (payment of excise taxes under Chapter 42 of the Code not deductible); Old Colony Trust Co. v. Commissioner, 279 U.S. 716 (1929); Huff v. Commissioner, 80 T.C. 804 (1983); Treas. Reg. §1.61-14(a). Accordingly, a full indemnification should include a gross-up on the payment so that after the manager pays income tax on the grossed-up payment, the manager is left with sufficient cash to pay the excise tax. 7. (a) When the Section 4955 excise tax is imposed on a political expenditure, the expenditure is not treated as an excess benefit under the Code Section 4958 intermediate sanctions imposed on public charities. I.R.C. §4955(e). (b) When the Section 4955 excise tax is imposed on a political expenditure, the expenditure is not treated as a taxable expenditure under the Section 4945 excise tax on taxable expenditures of private foundations. I.R.C. §4955(e). The provisions of Section 4945 are similar to those of Section 4955. The Section 4945 excise tax is discussed in Paragraph 57 of the I.R.C. column for "Regulatory Provisions on Contributions, Expenditures, and Electioneering."

ACTIVITY	FEDERAL ELECTION CAMPAIGN ACT OF 1971, AS AMENDED ("FECA")	INTERNAL REVENUE CODE OF 1986, AS AMENDED ("I.R.C.")
CONSEQUENCES OF VIOLATIONS		
	§111.16. The respondent can also request an oral hearing before the Commission. The Commission will grant the request if two Commissioners agree that a hearing would help resolve significant or novel legal issues, or significant questions about the application of the law to the facts. The Commission will inform the respondent whether the Commission is granting the respondent's request within thirty days of receipt of the respondent's brief. FEC Notice 2007-21, 72 F.R. 64,919 (Nov. 19, 2007). (c) If four of six voting commissioners vote a finding of probable cause, the parties can conduct settlement negotiations for not less than thirty days, but no more than ninety days. If the commissioners vote a finding of probable cause less than forty-five days before an election, the parties can conduct settlement negotiations for not less than fifteen days. If a conciliation agreement is reached, the FEC must make the agreement public. 52 U.S.C. §30109(a)(4)(B)(ii) (formerly 2 U.S.C. §437g(a)(4)(B)(ii)). In the absence of a violation of the conciliation agreement, the agreement operates as a complete bar to further civil action by the FEC. 52 U.S.C. §30109(a)(4)(A)(i) (formerly 2 U.S.C. §437g(a)(4)(A)(i)). (d) If negotiations do not result in a conciliation agreement, the commissioners, by the affirmative vote of four commissioners, can authorize the Office of General Counsel to file suit for recovery of a civil penalty. 52 U.S.C. §30109(a)(6)(A) (formerly 2 U.S.C. §437g(a)(6)(A)).	8. The IRS has termination assessment and injunctive powers to penalize flagrant political expenditures. I.R.C. §§6852 and 7409(a)(1). The Code does not define a flagrant violation. The 2002 CPE Text refers to Treas. Reg. §1.507-1(c)(2), dealing with the voluntary termination tax, which states that an act is willful and flagrant if it is "voluntarily, consciously, and knowingly committed in violation of chapter 42 (other than section 4940 or 4948(a)) and which appears to a reasonable man to be a gross violation of any such provision." 2002 CPE Text, at 361-62. 9. The Section 527(f) tax on exempt function expenditures generally does not apply to Section 501(c)(3) organizations. S. Rep. No. 93-1357, 93d Cong., 2d Sess. 29 (1974), reprinted in 1974 U.S. Code Cong. & Admin. News 7478, 7519. However, the tax can apply to a Section 501(c)(3) organization's activities in support of or opposition to a nominee for nonelective office. I.R.C. §527(e)(2). For the Section 501(c)(3) organization to avoid the tax, it must establish a separate segregated fund or a PAC to make the expenditures for these activities. I.R.C. §527(f)(3); 2003 CPE Text, at L-13 to L-14. See discussion of this issue in Paragraphs 4 and 28 to 30 of the I.R.C. column for "Regulatory Provisions on Contributions, Expenditures, and Electioneering."

ACTIVITY	FEDERAL ELECTION CAMPAIGN ACT OF 1971, AS AMENDED ("FECA")	INTERNAL REVENUE CODE OF 1986, AS AMENDED ("I.R.C.")
CONSEQUENCES OF VIOLATIONS		
	4. The civil penalty, whether resulting from a conciliation agreement or suit, cannot exceed the greater of $24,885, and an amount equal to the impermissible contribution. If the FEC or court determines that there is clear and convincing proof that a knowing and willful violation occurred, the penalty cannot exceed the greater of $53,088, and an amount equal to 200% of the impermissible contribution. These penalty amounts apply to penalties assessed after January 3, 2025 even if the associated violation occurred before this date. 52 U.S.C. §30109(a)(5)-(6) (formerly 2 U.S.C. §437g(a)(5)-(6)); 11 C.F.R. §111.24(a)(1)-(2); 90 F.R. 210 (Jan. 3, 2025). The $24,255 and $51,744 amounts are subject to cost-of-living adjustments under the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. §2461 nt. 5. Any person who knowingly and willfully violates any provision of FECA that involves the making, receiving, or reporting of any contribution, or the reporting of an expenditure having an aggregate value of $2,000 or more but less than $25,000 during a calendar year is subject to a fine of up to $100,000 for individuals and $200,000 for entities, imprisonment for not more than one year, or both. For contributions or expenditures aggregating $25,000 or more during a calendar year, the penalty is a fine of up to $250,000 for individuals and $500,000 for entities, imprisonment for up to five years, or both. 52 U.S.C. §30109(d)(1)(A) (formerly 2 U.S.C. §437g(d)(l)(A)); 18	10. The IRS can revoke the Section 501(c)(3) organization's tax-exempt status. With the exception of churches and their related organizations, the organization is ineligible for reclassification as a Section 501(c)(4) organization. I.R.C. §504(a)(2)(B) and (c); Branch Ministries, Inc. v. Rossotti, 211 F.3d 137 (D.C. Cir. 2000); Christian Echoes National Ministry, Inc. v. United States, 470 F.2d 849 (10th Cir. 1972), cert. denied, 414 U.S. 864 (1973). 11. The IRS can seek to impose the Section 4955 excise tax, and also seek to revoke the Section 501(c)(3) organization's tax-exempt status. The IRS seeks to impose the excise tax instead of revocation only when the prohibited expenditure is unintentional, small in amount, and the organization has adopted procedures to prevent future similar expenditures. H.R. Rep. No. 100-391, Part II, 100th Cong., 1st Sess. 1623-24 (1987), reprinted in 1987 U.S. Code Cong. & Admin. News 2313-1, 2313-1203 to 1204; Preamble to Final Regulations of Dept. of Treasury on Political Expenditures by Section 501(c)(3) Organizations, 60 F.R. 62,209 (Dec. 5, 1995); Staff of Joint Committee on Taxation, 117th Cong., Present Law and Background Relating to the Federal Tax Treatment of Political Campaign and Lobbying Activities of Tax-Exempt Organizations 6 n. 24 (2022); 2002 CPE Text, at 353-54. See also T.A.M. 200437040 (Sept. 10, 2004) (IRS should exercise its discretion to impose only the Section 4955 excise tax, and not revocation, when the

ACTIVITY	FEDERAL ELECTION CAMPAIGN ACT OF 1971, AS AMENDED ("FECA")	INTERNAL REVENUE CODE OF 1986, AS AMENDED ("I.R.C.")
CONSEQUENCES OF VIOLATIONS		
	U.S.C. §3571(b)(3) and (5) and (c)(3) and (5). The $2,000 limitation is reduced to $250 for certain knowing and willful violations involving the solicitation of contributions to a PAC and the expenditure of PAC funds. 52 U.S.C. §30109(d)(1)(B) (formerly 2 U.S.C. §437g(d)(l)(B)). 6. Good faith reliance on an FEC advisory opinion is a complete defense to any sanction on the person or entity that requested the opinion. In addition, any other person or entity involved in an activity that is indistinguishable in all material aspects from the activity referred to in the advisory opinion has a complete defense. 52 U.S.C. §30108(c) (formerly 2 U.S.C. §437f(c)). 7. A conciliation agreement entered into by a defendant with the FEC may be introduced as evidence of the defendant's lack of knowledge or intent to commit an offense. 52 U.S.C. §30109(d)(2) (formerly 2 U.S.C. §437g(d)(2)). In addition, a court, in a criminal action and in weighing the seriousness of the violation and in considering the appropriateness of the penalty, shall take into account whether the violation is the subject of a conciliation agreement, whether the conciliation agreement is in effect, and whether the defendant has complied with it. 52 U.S.C. §30109(d)(3) (formerly 2 U.S.C. §437g(d)(3)). 8. (a) Knowing and willful violations of FECA were subject to the federal sentencing guidelines before the United States Supreme Court's decisions in United States v. Booker, 543	campaign intervention statements were only two brief paragraphs in two broadcasts during the presidential campaign. No other campaign intervention statements during the three years at issue appear to have occurred. The organization has since adopted a policy to prevent recurrences of campaign intervention statements). 12. (a) A charitable contribution deduction is disallowed for contributions to a Section 501(c)(3) organization that violates the prohibition on campaign intervention. I.R.C. §170(c)(2)(D) (a charitable contribution eligible for an income tax deduction means a contribution or gift to or for the use of a corporation, trust, or community chest, fund, or foundation "which is not disqualified for tax exemption under section 501(c)(3) by reason of attempting to influence legislation, and which does not participate in, or intervene in (including the publishing or distributing or statements), any political campaign on behalf of (or in opposition to) any candidate for public office"); Treas. Reg. §1.170A-1(j)(5); Cavell v. Commissioner, T.C. Memo. 1980-516. (b) A charitable contribution deduction is disallowed for contributions to a Section 501(c)(3) organization that are earmarked for lobbying. Treas. Reg. §1.170A-1(j)(6). (c) A charitable contribution deduction is disallowed for an out-of-pocket expenditure made by any person on behalf of a charity, other than a church, if the expenditure

ACTIVITY	FEDERAL ELECTION CAMPAIGN ACT OF 1971, AS AMENDED ("FECA")	INTERNAL REVENUE CODE OF 1986, AS AMENDED ("I.R.C.")
CONSEQUENCES OF VIOLATIONS		
	U.S. 220 (2005), and United States v. Fanfan, 543 U.S. 220 (2005). In these decisions, the Court struck down the requirement that courts impose a sentence within the guidelines' range absent circumstances justifying a departure. This requirement violated the Sixth Amendment right to a jury trial, which prohibits a judge from increasing a sentence beyond the one that could have been imposed based only on the facts found by the jury. The Court then directed sentencing courts to consider the guidelines in imposing a sentence. Assuming that a corporation has a Sixth Amendment right to a jury trial, and since courts must consider the guidelines, courts will likely consider a corporation's compliance program in imposing a sentence. Furthermore, a corporation can argue that its compliance program is entitled to greater weight as a mitigating factor than otherwise provided by the guidelines. See also Southern Union Co. v. United States, 567 U.S. 343 (2012) (Sixth Amendment right to a jury trial requires that any fact that increases the maximum sentence of a criminal fine be submitted to the jury). (b) The United States Supreme Court elaborated on its Booker and Fanfan jurisprudence in three cases in 2007 with more than a touch of incoherency. A court of appeals "may apply a presumption of reasonableness to a district court sentence that reflects a proper application of the Sentencing Guidelines," but the "presumption is not binding." Rita v. United States, 551 U.S. 338, 347 (2007). A trial judge may determine that a "within-Guidelines sentence is 'greater than	is made for the purpose of influencing legislation. I.R.C. §170(f)(6). (d) A charitable contribution deduction is disallowed for contributions to a Section 501(c)(3) organization that engages in lobbying, as defined under Code Section 162(e)(1), if: (i) the lobbying involves matters of direct financial interest to the contributor's trade or business; and (ii) a principal purpose of the contribution is to avoid the deduction disallowance rules of Section 162(e) that would apply if the contributor had conducted the lobbying directly. I.R.C. §170(f)(9). This rule is designed to prevent contributors from evading the rules under Section 162(e), which do not have an exception for nonpartisan analysis, by contributions to a charity that conducts nonpartisan analysis of legislative proposals affecting the contributor's trade or business. Joint Committee on Taxation, Present Law and Background Relating to the Federal Tax Treatment of Political Campaign and Lobbying Activities of Tax-Exempt Organizations (JCX-7-22), at 18 (April 29, 2022). Cf. Harvey P. Dale, Daniel J. Hemel & Jill S. Manny, "What Are the Real Tax Risks for Harvard?," Tax Notes (May 22, 2025) ("Loss of federal tax exemption would, to be sure, mean that donors no longer could claim a charitable contribution deduction on their individual income tax returns for gifts made directly to the university. But another federal tax benefit for

ACTIVITY	FEDERAL ELECTION CAMPAIGN ACT OF 1971, AS AMENDED ("FECA")	INTERNAL REVENUE CODE OF 1986, AS AMENDED ("I.R.C.")
CONSEQUENCES OF VIOLATIONS		
	necessary' to serve the objectives of sentencing." Kimbrough v. United States, 552 U.S. 85, 91 (2007). Since the Guidelines are advisory, the trial judge can depart from the Guidelines based on the judge's disagreement with the Sentencing Commission's policy determinations. When a court of appeals reviews a sentence, "closer review may be in order when the sentencing judge varies from the Guidelines based solely on the judge's view that the Guidelines range 'fails properly to reflect §3553(a) considerations' even in a mine-run case." Id. at 109 (quoting from Rita, 551 U.S. at 351) (under 18 U.S.C. §3553 a court, in imposing a sentence, must satisfy the four traditional objectives of sentencing and consider seven factors). Finally, "while the extent of the difference between a particular sentence and the recommended Guideline range is surely relevant, courts of appeal must review all sentences - whether inside, just outside, or significantly outside the Guidelines range - under a deferential abuse of discretion standard." Gall v. United States, 552 U.S. 38, 41 (2007). The trial judge, in determining the appropriate sentence, "may not presume that the Guidelines range is reasonable," and "must make an individualized assessment based on the facts presented." When the trial judge determines that an outside-Guidelines sentence is appropriate, the judge "must consider the extent of the deviation and ensure that the justification is sufficiently compelling to support the degree of variance." Id. at 50. See also Nelson v. United States, 555 U.S. 350, 352 (2009) (per curiam) ("Our cases do not	philanthropy, the exclusion of gains on gifts of appreciated property, would remain. For some of Harvard's highest-dollar donors, the gain exclusion matters many times more than the tax deduction. Indeed, for some of Harvard's most significant financial supporters – private foundations and public charities that make grants to the university – the deductibility of donations to Harvard does not matter at all because those organizations are themselves tax-exempt and permitted to make grants to nonexempt grantees. (Private foundations that make grants to nonexempt grantees must meet certain 'expenditure responsibility' requirements related to oversight and reporting, but those requirements do not prevent the largest private foundations from granting tens of millions of dollars to nonexempt grantees each year.)") ("Donors who want to make tax-deductible contributions for Harvard's benefit also could channel their gifts through private foundations or DAFs, which in turn could make grants for specific programs at Harvard as long as their sponsoring organization is willing to make a grant to nonexempt Harvard and exercises 'expenditure responsibility' for the grant. For example, a donor could fund a specific research project or course through a private foundation or DAF if the sponsoring organization ensured that the grant was used only for scientific, literary, or educational purposes and adequately documented that fact.") (footnotes omitted) (available at

ACTIVITY	FEDERAL ELECTION CAMPAIGN ACT OF 1971, AS AMENDED ("FECA")	INTERNAL REVENUE CODE OF 1986, AS AMENDED ("I.R.C.")
CONSEQUENCES OF VIOLATIONS		
	allow a sentencing court to presume that a sentence within the applicable Guidelines is reasonable."). (c) The Guidelines of the United States Sentencing Commission for FECA violations were contained in the United States Sentencing Guidelines Manual §§2C1.1-2C1.8 (Nov. 1, 2003). The Guidelines provided for a base offense level of 8, and five offense characteristics for aggravating conduct that enhance the punishment: (i) a reference to the fraud loss table in §2B.1 to increase the offense level by reference to the amounts involved in illegal campaign finance transactions; (ii) alternative enhancements if the offense involved a foreign national (2 levels) or a foreign government (4 levels); (iii) alternative enhancements of 2 levels each if the offense involved governmental funds or an intent to derive a specific, identifiable nonmonetary federal benefit; (iv) a 4 level enhancement if the offender engaged in thirty or more illegal transactions; and (v) a 4 level enhancement if the offense involved the use of intimidation, threat of pecuniary or other harm, or coercion. (d) If an offense occurs even though the organization had in place at the time of the offense an Effective Compliance and Ethics Program, the organization receives a three point mitigating factor reduction in its Culpability Score. §8C2.5(f)(1). This score determines the multiplier that applies to the organization's base-level fine and is directly proportional to the magnitude of the organization's culpability. The organization does not receive the reduction	https://www.taxnotes.com/featured-analysis/what-are-real-tax-risks-harvard/2025/05/21/7s7q1). 13. A Section 501(c)(3) organization that loses its tax-exempt status likely will face claims by contributors, whose contributions are no longer deductible, for rescission and return of their contributions. Contributors who do not itemize deductions and do not have the tax benefit of a charitable contribution deduction may lack standing to bring these claims. 14. (a) The IRS has issued guidance on a donor's right to take a charitable contribution deduction under Code Section 170(c) when the donor makes a contribution to a charitable organization before the date that the IRS publicly announces that the organization ceases to qualify as one to which contributions are deductible under Code Section 170(c). Rev. Proc. 2018-32, 2018-23 I.R.B. 739. (b) Under Treas. Reg. §1.170A-9(f)(5)(ii), a donor may rely on the continued validity of a determination letter or ruling concluding that an entity is described in I.R.C. §170(b)(1)(A)(vi) until the IRS makes a public announcement of the organization's change in status. However, the donor may not rely on a determination letter or ruling if the donor was responsible for, or aware of, the act or failure to act that resulted in the loss of classification, or knew that the loss was imminent.

ACTIVITY	FEDERAL ELECTION CAMPAIGN ACT OF 1971, AS AMENDED ("FECA")	INTERNAL REVENUE CODE OF 1986, AS AMENDED ("I.R.C.")
CONSEQUENCES OF VIOLATIONS		
	if, after becoming aware of an offense, it unreasonably delayed reporting the offense to appropriate governmental authorities. §8C2.5(f)(2). See also In re Caremark International, Inc. Derivative Litigation, 698 A.2d 959, 970 (Del. Ch. 1996) (directors of corporations convicted of criminal wrongdoing can be held personally liable for sustained or systemic failures to ensure that their companies had effective compliance programs in place). (e) The amendments to the Sentencing Guidelines effective as of November 1, 2004 tightened the requirements for an organization's Effective Compliance and Ethics Program, §8B2.1. One of the requirements is that the organization's program "be promoted and enforced consistently throughout the organization through (i) appropriate incentives to perform in accordance with the compliance and ethics program; and (ii) appropriate disciplinary measures for engaging in criminal conduct and for failing to take reasonable steps to prevent or detect criminal conduct." §8B2.1(b)(6). Another requirement is that the organization, after discovering the criminal conduct, must take reasonable steps to "respond appropriately to the criminal conduct and to prevent further similar criminal conduct, including making any necessary modifications to the organization's compliance and ethics program." §8B2.1(b)(7).	(c) Donors can rely on the IRS compilation, Tax Exempt Organization Search, which is available on the IRS website at https://www.irs.gov/charities-non-profits/tax-exempt-organization-search. The Tax Exempt Organization Search lists organizations that have received a determination letter or ruling stating that contributions to the listed organizations (or in the case of a group exemption, to the listed central organization and those subordinate organizations covered by the group exemption letter) may be deductible under Code Section 170. The Tax Exempt Organization Search does not include separate listings for subordinate organizations covered by a group exemption letter. The information contained in the Tax Exempt Organization Search is taken from the EO BMF, and is generally updated monthly. Rev. Proc. 2018-32, §§3.01 to 3.05, 2018-23 I.R.B. 739. (d) Donors can also rely on the IRS extract of certain information on tax-exempt organizations from the IRS's electronic Exempt Organizations Business Master File Extract (EO BMF Extract), which is available at https://www.irs.gov/charities-non-profits/exempt-organizations-business-master-file-extract-eo-bmf. The EO BMF Extract contains information on all IRS-recognized tax-exempt organizations, including those that are ineligible to receive tax-deductible contributions. The data fields provided are: (i) the organization's name, employer identification number, and address; (ii)

ACTIVITY	FEDERAL ELECTION CAMPAIGN ACT OF 1971, AS AMENDED ("FECA")	INTERNAL REVENUE CODE OF 1986, AS AMENDED ("I.R.C.")
CONSEQUENCES OF VIOLATIONS		
	(f) Under Application Note 6 to §8B2.1(b)(7) effective as of November 1, 2010, the organization must take reasonable steps to remedy the harm caused by the criminal conduct, and reasonable steps to prevent further similar criminal conduct. Reasonable steps to remedy the harm may include, when appropriate, providing restitution to identifiable victims, as well as other forms of remediation. Other reasonable steps may include self-reporting and cooperation with authorities. Reasonable steps to prevent further similar criminal conduct may include the use of an outside professional advisor to ensure adequate assessment and implementation of any modifications to the compliance program. (g) By granting the organization the discretion to determine whether to provide restitution, the Sentencing Guidelines avoid placing the organization in the position of providing restitution to qualify for the reduction in the Culpability Score but without knowing whether the sentencing judge will order restitution, and taking the risk of having to pay the same victims twice if they bring civil litigation. (h) The amendments to the Sentencing Guidelines effective as of November 1, 2010 further tighten the requirements for an organization's Effective Compliance and Ethics Program. §§8B2.1 and 8C2.5(f)(3). The organization should take reasonable steps to remedy the harm resulting from the criminal conduct. Such steps include self-reporting and cooperation with authorities. In addition, the amendment	subsection code (the paragraph under Section 501(c) under which the organization is recognized as exempt); (iii) ruling date; (iv) affiliation code (status as an independent, central, or subordinate organization); (v) deductibility code (the foundation classification under Section 509(a)); and (vi) foundation code (stating whether an organization is a private foundation, private operating foundation, or public charity; if applicable, the appropriate subparagraph of Section 170(b)(1)(A); and for determinations issued in 2011 and after, whether a Section 509(a)(3) supporting organization is a Type I, Type II, or Type III functionally or nonfunctionally integrated supporting organization). The EO BMF Extract is generally updated monthly. Rev. Proc. 2018-32, §§3.01 to 3.05, 2018-23 I.R.B. 739. (e) If an organization listed in or covered by Tax Exempt Organization Search or the EO BMF Extract ceases to qualify as an organization to which contributions are deductible under §170 and the IRS revokes a determination letter or ruling concluding that the organization is one to which contributions are deductible under Section 170, donors may generally rely on the determination letter or ruling information provided in Tax Exempt Organization Search or the EO BMF Extract that contributions to the organization are deductible under Section 170 until the date of a public announcement stating that the organization ceases to qualify as an organization contributions to which are deductible under

ACTIVITY	FEDERAL ELECTION CAMPAIGN ACT OF 1971, AS AMENDED ("FECA")	INTERNAL REVENUE CODE OF 1986, AS AMENDED ("I.R.C.")
CONSEQUENCES OF VIOLATIONS		
	allows an organization to receive a three point mitigating factor reduction in its Culpability Score for an Effective Compliance and Ethics program when an organization's high-level or substantial authority personnel are involved in the offense as long as the organization satisfies the following four requirements: (i) the individual or individuals with operational responsibility for the compliance and ethics program have direct reporting obligations to the organization's governing authority or appropriate subgroup thereof; (ii) the compliance and ethics program detected the offense before discovery outside the organization or before such discovery was reasonably likely; (iii) the organization promptly reported the offense to the appropriate governmental authorities; and (iv) no individual with operational responsibility for the compliance and ethics program participated in, condoned, or was willfully ignorant of the offense. §8C2.5(f)(3). (i) Under Application Note 11 to §8C2.5, an individual has direct reporting obligations to the governing authority or an appropriate subgroup thereof if that individual has express authority to communicate personally to the governing authority or appropriate subgroup thereof: (i) promptly on any matter involving criminal conduct or potential criminal conduct; and (ii) no less than annually on the implementation and effectiveness of the compliance and ethics program. The purposes of this requirement are to maintain a compliance officer's independence from the organization's management, and to encourage the	Section 170. The public announcement may be made via the Internal Revenue Bulletin, on the portion of the IRS website that relates to exempt organizations, or by such other means designated to put the public on notice of the change in the organization's status. Rev. Proc. 2018-32, §4.01, 2018-23 I.R.B. 739. (f) If a legally enforceable obligation to the organization under local law has been created before the date of the public announcement or posting, and satisfaction of the obligation occurs on or after this date, the period for which a contribution is deductible may be extended upon specific exercise of authority under Section 7805(b)(8). Rev. Proc. 2018-32, §4.03, 2018-23 I.R.B. 739. (g) The IRS is not precluded from disallowing a deduction for any contribution made after an organization ceases to qualify as a charitable organization under Code Section 170(c) and before the public announcement or posting of the revocation if the donor: (i) had knowledge of the revocation of the determination letter or ruling before the public announcement or posting; (ii) was aware that such revocation was imminent; or (iii) was in part responsible for, or was aware of, the activities or deficiencies by the organization that gave rise to the loss of qualification. Rev. Proc. 2018-32, §4.04, 2018-23 I.R.B. 739. (h) The reliance on tax-exempt status under Section 4 of Rev. Proc. 2018-32 applies only to contributions made to

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CONSEQUENCES OF VIOLATIONS		
	organization to maintain a formal policy that sets forth the compliance officer's right of access to matters of criminal inquiry. (j) The direct reporting requirement is necessary for the reduction in the Culpability Score only when high-level or substantial authority personnel are involved in the offense. Since it is difficult to predict who will commit an offense, the prudent course is for the organization to satisfy all the requirements of the Sentencing Guidelines for an Effective Compliance and Ethics Program, Sections 8B2.1, 8C2.5(f), and 8C2.8(11). See also U.S. Department of Justice Criminal Division, Evaluation of Corporate Compliance Programs (Updated September 2024) (in evaluating a corporate compliance program, a prosecutor should ask three fundamental questions: is the program well designed?; is the program being applied earnestly and in good faith, or in other words, is the program adequately resourced and empowered to function effectively?; and does the program work in practice?; prosecutors will evaluate the answers in determining whether a corporation's compliance program was effective at the time of the offense, and is effective at the time of a charging decision or resolution, to determine whether companies will receive a declination or be prosecuted, the amount of any monetary penalties, and the compliance obligations in any negotiated resolution, e.g., monitorship or reporting obligations) (available at	an organization listed in or covered by Tax Exempt Organization Search or the EO BMF Extract in the organization's official name, its recognized popular name, or a contraction of either of these names that is reasonably identifiable or widely known. The reliance on tax-exempt status does not apply to contributions made nominally to an organization listed in or covered by Tax Exempt Organization Search or the EO BMF Extract but with the understanding or on a condition that they be made available to or for the use of an organization not listed in or covered by Tax Exempt Organization Search or the EO BMF Extract. Rev. Proc. 2018-32, §6.01, 2018-23 I.R.B. 739. (i) The reliance on tax-exempt status under Section 4 of Rev. Proc. 2018-32 does not apply to a subordinate organization covered by a group exemption letter regardless of whether the subordinate organization appears in the EO BMF Extract. Rev. Proc. 2018-32, §6.03, 2018-23 I.R.B. 739. (j) When a third-party gives a donor information on an organization from the EO BMF Extract, the donor can rely on the information if the third-party gives the donor a report that states: (i) the organization's name, employer identification number, and foundation status under Code Section 509(a)(1), (2), or (3) status (including the supporting organization type, if applicable); (ii) whether contributions to the organization are deductible; (iii) the

ACTIVITY	FEDERAL ELECTION CAMPAIGN ACT OF 1971, AS AMENDED ("FECA")	INTERNAL REVENUE CODE OF 1986, AS AMENDED ("I.R.C.")
CONSEQUENCES OF VIOLATIONS		
	https://www.justice.gov/criminal/criminal-fraud/page/file/937501/dl?inline); Alejandra Montenegro Almonte & Ann Sultan, "Key Insights From DOJ Revised Corporate Compliance Guide," EmploymentLaw360 (June 3, 2020) (under the June 2020 guidance, companies should address the following points: do compliance and control personnel have sufficient access to relevant sources of data to allow for timely and effective monitoring and testing of policies, controls, and transactions; are there any impediments that limit access to relevant sources of data and, if so, what is the company doing to address the impediments; whether policies and procedures have been published in a searchable format for easy reference by employees; whether the company tracks access to policies and procedures to understand which ones are attracting more attention from employees; does the program include comprehensive due diligence of any acquisition targets, as well as a process for timely and orderly integration of the acquired entity into existing compliance program structures and internal controls; if the company was unable to complete pre-acquisition due diligence, why did that occur; does the company have a process for tracking and incorporating into its periodic risk assessment lessons learned from the company's own prior issues, or from those of other companies operating in the same industry or geographical region); Aisling O'Shea, Nicolas Bourtin & Anthony Lewis, "DOJ Updates Guidance on the Evaluation of Corporate Compliance Programs," Harvard Law School Forum on	information comes from the most current update of the EO BMF Extract; (iv) the EO BMF Extract revision date; and (v) the date and time that the third-party provides the information to the donor. The donor must retain a hard copy or electronic copy of the report. Rev. Proc. 2018-32, §8, 2018-32 I.R.B. 739. (k) Contributions to a sham charitable or religious organization formed for the purpose of evading tax are not deductible regardless of whether the IRS erroneously issued a determination letter. Warden v. Commissioner, T.C. Memo. 1988-165. 15. For a discussion of the consequences of violation of the insubstantiality limitation on lobbying, see Paragraph 44 of the I.R.C. column for "Regulatory Provisions on Contributions, Expenditures, and Electioneering." For a discussion of the consequences of the failure to satisfy the requirements of the lobbying safe harbor election under Code Sections 501(h) and 4911, see Paragraph 46 of the I.R.C. column for "Regulatory Provisions on Contributions, Expenditures, and Electioneering." 16. (a) Under the Church Audit Procedures Act codified at Code Section 7611, the IRS can initiate an inquiry of a church only if an appropriate high-level Treasury official reasonably believes, based on a written statement of the facts and circumstances, that the organization may not satisfy the requirements for tax-exemption under Section

ACTIVITY	FEDERAL ELECTION CAMPAIGN ACT OF 1971, AS AMENDED ("FECA")	INTERNAL REVENUE CODE OF 1986, AS AMENDED ("I.R.C.")
CONSEQUENCES OF VIOLATIONS		
	Corporate Governance and Financial Regulation (June 20, 2020) ("The guidance's substantial emphasis on continual data-driven improvement programs suggests that the DOJ wishes to encourage, rather than punish, companies' remedial efforts to address potential past gaps and weaknesses in the compliance function. The guidance's focus on processes for tracking and making use of data analytics reflects an expectation that companies will make use of the data available to them.") (available at https://corpgov.law.harvard.edu/2020/06/20/doj-updates-guidance-on-the-evaluation-of-corporate-compliance-programs/#more-130486). Jeffrey Lehtman, Roxana Mondragon-Motta & Seth Cowell, "Evaluating Corporate Compliance – DOJ Guidelines for Prosecutors," Harvard Law School Forum on Corporate Governance and Financial Regulation (May 19, 2019) ("In light of the [April 2019] guidance, companies would be well-served to benchmark their current compliance program against the DOJ memorandum. In particular, companies that have been or may become internationally acquisitive should take the opportunity to evaluate the extent to which their current approach to pre-acquisition diligence and post-acquisition integration are sufficiently robust to withstand DOJ scrutiny in the event misconduct were to be identified post-closing.") (available at https://corpgov.law.harvard.edu/2019/05/19/evaluating-corporate-compliance-doj-guidelines-for-prosecutors/); John Savarese, Ralph Levene & David Anders, "The DOJ's	501(c)(3), may be carrying on an unrelated trade or business, or may otherwise be engaged in activities that are subject to taxation. The IRS must then give written notice to the church explaining the inquiry's general subject matter and the concerns that gave rise to it. I.R.C. §7611(a)(2); see also Treas. Reg. §1.511-2(a)(3)(ii) (for purposes of the unrelated business income tax, an organization is a church if its duties include the ministration of sacerdotal functions and the conduct of religious worship). (b) If the church's response does not adequately address the IRS's concerns, and the IRS wishes to examine the church's records and religious activities, the IRS must provide a second written notice to the church. This notice must include a copy of the inquiry notice, a description of the records and activities the IRS seeks to examine, an offer for a conference to discuss and resolve concerns, and copies of the IRS documents collected or prepared for the examination that are subject to disclosure under the Freedom of Information Act and tax laws. I.R.C. §7611(b)(2)-(3). In the case of church records, the IRS can commence an examination only to the extent necessary to determine the liability for, and the amount of, any tax. In the case of religious activities, the IRS can commence an examination only to the extent necessary to determine whether an organization claiming to be a

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CONSEQUENCES OF VIOLATIONS		
	Updated Guidance on Corporate Compliance Programs," Harvard Law School Forum on Corporate Governance and Financial Regulation (May 14, 2019) ("First, the [April 2019] guidance stresses that compliance programs should be dynamic and responsive to a company's unique risks and incident history. The guidance directs prosecutors to determine whether compliance programs have been updated 'in light of lessons learned,' and to consider if a company's program has evolved 'to address existing and changing compliance risks.' Companies therefore should maintain a clear, well-documented record of 'continuous improvement,' based on periodic review and recalibration, to best prepare its compliance program for scrutiny. Second, the guidance places enhanced emphasis on data-driven decision making, directing prosecutors from the outset to assess 'how information or metrics informed the company's compliance program.' Throughout, the guidance focuses on the use of metrics, counseling prosecutors to assess how a company under scrutiny has employed data to assess and enhance the effectiveness of its training programs, its internal controls, the tracking of misconduct, the responsiveness of internal investigations, and the impact of compliance-promoting incentive compensation. In the wake of this guidance, companies should take a hard look at the way they collect and employ compliance data to ensure that their record will stand up to this new, heightened level of attention.") (available at https://corpgov.harvard.edu/2019/05/14/the-	church is a church for any period. I.R.C. §7611(b)(1)(A)-(B). (c) Section 7611 provides an exception to church records for records sought pursuant to a summons to which Section 7609 applies. I.R.C. §7611(h)(4)(B)(i). Section 7609 governs the issuance and enforcement of third-party summonses by the IRS, and applies to any summons issued under Section 7602(a)(2). I.R.C. §7609(c). Section 7602(a)(2) applies to persons having possession, custody, or care of books of account containing entries relating to the business of the person liable for tax. This provision covers a third-party recordkeeper, which includes a bank. Thus, the "extent necessary" restriction on church records does not apply to information summoned from a taxpayer's bank. God's Storehouse Topeka Church v. United States, 98 F.4th 990, 996-97 (10th Cir. 2024); see also United States v. C.E. Hobbs Foundation for Religious Training & Education, Inc., 7 F.3d 169, 173 (9th Cir. 1993) (a bank summons is not governed by Section 7611); Bible Study Time, Inc. v. United States, 240 F. Supp. 3d 409, 420 (D.S.C. 2017) (third-party summons is governed by Section 7609, not Section 7611, even when the summons is issued in connection with a church tax inquiry). (d) In addition, the Church Audit Procedures Act protects churches from inquiry into their tax liability, but not from summonses issued as part of an investigation of a third-

ACTIVITY	FEDERAL ELECTION CAMPAIGN ACT OF 1971, AS AMENDED ("FECA")	INTERNAL REVENUE CODE OF 1986, AS AMENDED ("I.R.C.")
CONSEQUENCES OF VIOLATIONS		
	dojs-updated-guidance-on-corporate-compliance-programs/). (k) To receive any consideration for cooperation, the company must identify all individuals involved in or responsible for the misconduct regardless of their position, status, or seniority, and provide the Department of Justice nonprivileged information relating to that misconduct. To receive such consideration, companies cannot limit disclosure to those individuals believed to be only substantially involved in the criminal conduct. This requirement includes individuals inside and outside the company. Memorandum from Deputy Attorney General Lisa Monaco, "Corporate Crime Advisory Group and Initial Revisions to Corporate Criminal Enforcement Policies," at 3 (Oct. 28, 2021) (available at https://www.justice.gov/opa/speech/deputy-attorney-general-lisa-o-monaco-gives-keynote-address-abas-36th-national-institute). See also Ted Diskant & Julian L. Andre, "U.S. Deputy Attorney General Signals Aggressive DOJ Focus on Corporate Crime," Harvard Law School Forum on Corporate Governance (Nov. 25, 2021) ("[C]orporations should expect DOJ to heavily scrutinize any disclosures made to the government during a corporate investigation. While prosecutors are not permitted to demand privileged information, they are still more likely to press corporate counsel for additional information, particularly as to the	party's tax liability. I.R.C. §7611(i)(2) (Section 7611 does not apply to any inquiry or examination relating to the tax liability of any person other than a church); Kerr v. United States, 801 F.2d 1162 (9th Cir. 1986) (Section 7611 does not apply to summonses for a church's financial records when the IRS was investigating a taxpayer who had signatory authority over the church's bank accounts); Rowe v. United States, 2018 WL 2234810 (E.D. La. May 16, 2018) (Section 7611 does not apply to pastor employed by a church). (e) The Church Audit Procedures Act defines "appropriate high-level official as "the Secretary of the Treasury or any delegate of the Secretary whose rank is no lower than that of a principal Internal Revenue officer for an internal revenue region." I.R.C. §7611(h)(7). The difficulty in applying this definition is that the Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. No. 105-206, §1001(a), 112 Stat. 685 (1998), eliminated the position of Regional Commissioner. (f) In United States v. Living Word Christian Center, 2009 WL 250049 (D. Minn. Jan. 30, 2009), the court held that the person responsible for the reasonable belief determination should have broad responsibility and experience. That person should also have a high-profile position that would make it likely that he or she has a heightened understanding of the First Amendment rights of legitimate churches and the need for the IRS to

ACTIVITY	FEDERAL ELECTION CAMPAIGN ACT OF 1971, AS AMENDED ("FECA")	INTERNAL REVENUE CODE OF 1986, AS AMENDED ("I.R.C.")
CONSEQUENCES OF VIOLATIONS		
	scope of any internal investigation or the identities of employees believed to have knowledge of the alleged misconduct at issue. Prosecutors may also threaten to withhold cooperation credit if they feel that a company has failed to disclose sufficient information regarding any potential wrongdoers or witnesses. . . . [C]ompanies should also consider whether any ongoing internal investigations need to be adjusted in scope to ensure they are capturing information that DOJ now expects to receive in order to receive cooperation credit.") (available at https://corpgov.law.harvard.edu/2021/11/25/us-deputy-attorney-general-signals-aggressive-doj-focus-on-corporate-crime/#more-141470); John F. Savarese, Ralph M. Levene & Wayne M. Carlin, "White-Collar and Regulatory Enforcement: What Mattered in 2021 and What to Expect in 2022," Harvard Law School Forum on Corporate Governance (Feb. 2, 2022) (Assistant Attorney General for the Criminal Division Kenneth A. Polite Jr. explained that companies are not always in the best position to evaluate who is substantially involved in misconduct and that the Department of Justice may have information that indicates which individuals could be helpful to its case; the authors are concerned that this new policy may generate unnecessary delay and resource expenditure and could result in unfairness. Particularly when company counsel has significantly greater familiarity with the facts at the beginning of an investigation and can assist in guiding prosecutors to the important evidence and witnesses, the	investigate and eliminate church tax avoidance schemes. In addition, since a Regional Commissioner was only one management level removed from the Commissioner, the person responsible for the reasonable belief determination should have a similar management position. The court held that the Director of Exempt Organizations, Examination, who is four management levels removed from the Commissioner, did not satisfy these requirements. (g) In United States v. Bible Study Time, Inc., 295 F. Supp. 3d 606 (D.S.C. 2018), the court held that the Director, Exempt Organizations ("DEO") was not an appropriate high-level official. The DEO was too close to the exam function to serve as a check on overzealous examination activity. The court also held that the Commissioner of Tax Exempt and Governmental Entities holds a sufficiently high rank with sufficiently broad responsibilities to be an appropriate high-level official. Finally, the court held that the appropriate high-level official had the obligation to sign each of the notices. See generally Benjamin W. Akins, "A Broken Vesper: Questioning the Relevancy and Workability of the Church Audit Procedures Act," 44 Seton Hall Legislative Journal 1 (2020); Ellen P. Aprill & Lloyd Hitoshi Mayer, "21st Century Churches and Federal Tax Law," 2024 University of Illinois Law Review 939; Grant M. Newman, "The Taxation of Religious Organizations in

ACTIVITY	FEDERAL ELECTION CAMPAIGN ACT OF 1971, AS AMENDED ("FECA")	INTERNAL REVENUE CODE OF 1986, AS AMENDED ("I.R.C.")
CONSEQUENCES OF VIOLATIONS		
	authors believe companies should be given full cooperation credit and not be second-guessed by the prosecutors when companies have acted in good faith to substantially assist the government's inquiry) (available at https://corpgov.law.harvard.edu/2022/02/02/white-collar-and-regulatory-enforcement-what-mattered-in-2021-and-what -to-expect-in-2022/). (l) The Department of Justice has issued further revisions to its corporate criminal enforcement policies. First, to receive full cooperation credit, corporations must produce on a timely basis all relevant, nonprivileged facts and evidence about individual misconduct such that prosecutors have the opportunity to effectively investigate and seek criminal charges against culpable individuals. Companies that identify significant facts but delay their disclosure will place their eligibility for cooperation credit in jeopardy. Prosecutors will consider whether a company promptly notified prosecutors of particularly relevant information once it was discovered, or if the company delayed disclosure in a manner that inhibited the government's investigation. When prosecutors identify undue or intentional delay in the production of information or documents, particularly with respect to documents that impact the government's ability to assess individual culpability, cooperation credit will be reduced or eliminated. Memorandum from Deputy Attorney General Lisa Monaco, "Further Revisions to Corporate Criminal Enforcement Policies Following Discussions with Corporate Crime Advisory Group," at 3 (Sept. 15, 2022)	America," 42 Harvard Journal of Law & Public Policy 681 (Spring 2019); Ainsley Land Tucker, "Masquerading Churches: Abusing the Internal Revenue Code to Avoid Financial Transparency," 40 Review of Banking & Financial Law 973 (Spring 2021). 17. (a) If the political campaign activity of a Section 501(c)(4) organization becomes its primary activity, the organization loses its Section 501(c)(4) status and exemption from income tax for income that is not unrelated taxable business income. I.R.C. §§501(b) and 513(c); Treas. Reg. §1.513-1(c)(1) and (d)(2); IRS Publication 598, Tax on Unrelated Business Income of Exempt Organizations (March 2021). (b) If the organization that loses its Section 501(c)(4) status meets the requirements of Code Section 527 by engaging primarily in accepting contributions or making expenditures, or both, for political campaign activity, it becomes subject to tax as a political organization under Section 527. Political organizations pay income tax on gross income, less income related to campaign intervention, which includes contributions and campaign fundraising events, and less deductions for costs unrelated to campaign intervention. Furthermore, only political organizations that satisfy their reporting requirements to the IRS are free of income tax. I.R.C. §527(b)-(c) and (j); Roger Colinvaux, "Political Activity Limits and Tax

ACTIVITY	FEDERAL ELECTION CAMPAIGN ACT OF 1971, AS AMENDED ("FECA")	INTERNAL REVENUE CODE OF 1986, AS AMENDED ("I.R.C.")
CONSEQUENCES OF VIOLATIONS		
	(available at https://www.justice.gov/opa/speech/file/1535301/). (m) Second, absent the presence of aggravating factors, the Department of Justice will not seek a guilty plea if a corporation has voluntarily self-disclosed, fully cooperated, and timely and appropriately remediated the criminal conduct. Examples of aggravating factors are misconduct that poses a grave threat to national security, or is deeply pervasive throughout the company. The Department will not require the imposition of an independent compliance monitor for a cooperating corporation that voluntarily self-discloses the relevant conduct if, at the time of resolution, it also shows that it has implemented and tested an effective compliance program. Memorandum from Deputy Attorney General Lisa Monaco, "Further Revisions to Corporate Criminal Enforcement Policies Following Discussions with Corporate Crime Advisory Group," at 7 (Sept. 15, 2022) (available at https://www.justice.gov/opa/speech/file/1535301/). (n) Third, prosecutors should evaluate the corporation's commitment to fostering a strong culture of compliance at all levels of the corporation. As part of this evaluation, prosecutors should consider how the corporation has incentivized or sanctioned employee, executive, and director behavior, including through compensation systems. Prosecutors should consider whether the corporation's compensation systems incorporate elements, such as	Exemption: A Gordian's Knot," 34 Virginia Tax Review 1, 9-10 (2014). (c) Section 527 also contains a special provision taxing exempt organizations that are not political organizations on the lesser of their investment income and their exempt function expenditures. I.R.C. §527(f). See discussion of exempt function expenditures in Paragraphs 28 to 39 of the I.R.C. column for "Regulatory Provisions on Contributions, Expenditures, and Electioneering." (d) Once a Section 501(c)(4) organization becomes a Section 527 political organization, unlike a Section 501(c)(4) organization it must file with the IRS at regular intervals a publicly available report on Form 8872 of the organization's contributions, donors, and expenditures. I.R.C. §527(j). The organization must also file with the IRS annually a publicly available Form 990. I.R.C. §6033; Freedom Path, Inc. v. IRS, 805 F. Supp. 3d 329, 336-38 (D.D.C. 2025); Roger Colinvaux, "Political Activity Limits and Tax Exemption: A Gordian's Knot," 34 Virginia Tax Review 1, 22 (2014).

ACTIVITY	FEDERAL ELECTION CAMPAIGN ACT OF 1971, AS AMENDED ("FECA")	INTERNAL REVENUE CODE OF 1986, AS AMENDED ("I.R.C.")
CONSEQUENCES OF VIOLATIONS		
	clawbacks, that enable penalties to be levied against current or former employees, executives, or directors whose direct or supervisory actions or omissions contributed to criminal conduct. Since misconduct is often discovered after it has occurred, prosecutors should examine whether compensation systems are crafted in a way that allows for retroactive discipline, including through the use of clawbacks, partial escrowing of compensation, or equivalent arrangements. Memorandum from Deputy Attorney General Lisa Monaco, "Further Revisions to Corporate Criminal Enforcement Policies Following Discussions with Corporate Crime Advisory Group," at 9-10 (Sept. 15, 2022) (available at https://www.justice.gov/opa/speech/file/1535301/). (o) Prosecutors should also consider whether a corporation's compensation systems provide affirmative incentives for compliance-promoting behavior. Affirmative incentives include the use of compliance metrics and benchmarks in compensation calculations and the use of performance reviews that measure and reward compliance-promoting behavior, both as to the employee and any subordinates whom the employee supervises. Memorandum from Deputy Attorney General Lisa Monaco, "Further Revisions to Corporate Criminal Enforcement Policies Following Discussions with Corporate Crime Advisory Group," at 10 (Sept. 15, 2022) (available at https://www.justice.gov/opa/speech/file/1535301/).	

ACTIVITY	FEDERAL ELECTION CAMPAIGN ACT OF 1971, AS AMENDED ("FECA")	INTERNAL REVENUE CODE OF 1986, AS AMENDED ("I.R.C.")
CONSEQUENCES OF VIOLATIONS		
	(p) Prosecutors should also consider whether a corporation uses or has used nondisclosure or nondisparagement provisions in compensation agreements, severance agreements, or other financial arrangements so as to inhibit the public disclosure of criminal misconduct by the corporation or its employees. Memorandum from Deputy Attorney General Lisa Monaco, "Further Revisions to Corporate Criminal Enforcement Policies Following Discussions with Corporate Crime Advisory Group," at 10 (Sept. 15, 2022) (available at https://www.justice.gov/opa/speech/file/1535301/). See generally Robert S. Bennett, Hilary Holt LoCicero & Brooks M. Hanner, "From Regulation to Prosecution to Cooperation: Trends in Corporate White Collar Crime Enforcement and the Evolving Role of the White Collar Criminal Defense Attorney," 68 The Business Lawyer 411 (Feb. 2013); Paul Fiorelli & Ann Marie Tracey, "Why Comply? Organizational Guidelines Offer a Safe Harbor in the Storm," 32 Journal of Corporation Law 467 (Spring 2007); Sarah H. Duggin, Shannon A.J. Singleton & James D. Wing, "The 'Cooperation Revolution' and the Professional Ethics of Giving Advice on Executive Protection Issues," 77 The Business Lawyer 1079 (Fall 2022); Karen E. Woody, "Corporate Crime and Cooperation," 79 The Business Lawyer 65 (Winter 2023-2024).	

ACTIVITY	FEDERAL ELECTION CAMPAIGN ACT OF 1971, AS AMENDED ("FECA")	INTERNAL REVENUE CODE OF 1986, AS AMENDED ("I.R.C.")
CONSEQUENCES OF VIOLATIONS		
	Robert G. Morvillo & Robert J. Anello, "Corporate Compliance Programs: No Longer Voluntary," New York Law Journal, Dec. 7, 2004, at 3. 9. The Department of Justice has adopted three policies to carry out its Further Revisions to Corporate Criminal Enforcement Policies Following Discussions with Corporate Crime Advisory Group: (a) Corporate Enforcement and Voluntary Self-Disclosure Policy, Justice Manual 9-47.120 (discussed in Paragraph 10); (b) U.S. Department of Justice Criminal Division, Evaluation of Corporate Compliance Programs (Updated September 2024) (discussed in Paragraph 11); and (c) and The Criminal Division's Pilot Program Regarding Compensation Incentives and Clawbacks (discussed in Paragraph 12). 10. (a) On March 10, 2026, the Criminal Division of the Department of Justice issued its updated Corporate Enforcement and Voluntary Self-Disclosure Policy, Justice Manual 9-47.120 ("CEP") (available at https://www.justice.gov/dag/media/1430731/dl?inline). The CEP applies to all corporate criminal matters handled by the DOJ except for antitrust violations under 15 U.S.C. §§1 to 38. This means the CEP applies to all matters handled by every DOJ component and every U.S. Attorney's Office nationwide.	

ACTIVITY	FEDERAL ELECTION CAMPAIGN ACT OF 1971, AS AMENDED ("FECA")	INTERNAL REVENUE CODE OF 1986, AS AMENDED ("I.R.C.")
CONSEQUENCES OF VIOLATIONS		
	(b) Under Part I of the CEP, the Criminal Division will decline to prosecute a company for criminal conduct when the following requirements are met: (i) The company voluntarily self-disclosed the misconduct to an appropriate DOJ criminal component; (ii) The company fully cooperated with the DOJ's investigation; (iii) The company timely and appropriately remediated the misconduct; and (iv) There are no aggravating circumstances related to the nature and seriousness of the offense, egregiousness or pervasiveness of the misconduct within the company, severity of harm caused by the misconduct, or corporate recidivism, specifically, a criminal adjudication or resolution either within the last five years or otherwise based on similar misconduct by the entity engaged in the current misconduct. (v) Factors (i) through (iii) are defined in Appendix B of the CEP. (vi) Voluntary self-disclosure requires: (A) the company must make a good faith disclosure of the misconduct to the appropriate DOJ component; (B) the misconduct was not previously known to the DOJ; (C) the company had no pre-existing obligation to disclose the misconduct to the DOJ; (D) the company's voluntary disclosure occurs prior to an	

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CONSEQUENCES OF VIOLATIONS		
	imminent threat of disclosure or government investigation under U.S.S.G. §8C2.5(g)(1); and (E) the company discloses the misconduct within a reasonably prompt time after becoming aware of it, with the burden being on the company to demonstrate timeliness. (vii) Good faith disclosure to one component of the DOJ where the matter is later brought to another appropriate component for investigation will also qualify. Disclosure made only to federal agencies, state and local governments, or civil enforcement agencies generally do not qualify. However, good faith disclosures to such entities may qualify if appropriate under the circumstances. This will be determined based on the particular facts and at the discretion of the DOJ. In all cases, such disclosures may be considered as part of a company's cooperation and remediation. (viii) If a whistleblower makes both an internal report to a company and a whistleblower submission to the DOJ, the company will still qualify for a declination even if the whistleblower submits to the DOJ before the company self-discloses as long as the company: (A) self-reports the conduct to the DOJ as soon as reasonably practicable but no later than 120 days after receiving the whistleblower's internal report; and (B) meets the other requirements for voluntary self-disclosure and a declination under the CEP. (ix) The requirement for a company to disclose the misconduct within a reasonably prompt time after becoming	

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CONSEQUENCES OF VIOLATIONS		
	aware of it means that a company should disclose the potential wrongdoing at the earliest possible time, even when a company has not yet completed an internal investigation. Companies must engage in a balancing act of reasonably prompt reporting and the risk of premature disclosure before it has obtained enough facts to ensure that it makes a timely, truthful, and accurate disclosure. (x) To minimize uncertainty for companies that self-report, prosecutors must endeavor to obtain relevant facts and circumstances about the disclosure to make a determination as to eligibility for Part I and Part II of the CEP, and where appropriate are encouraged to inform the company as soon as practicable. (c) If there are aggravating circumstances, prosecutors retain the discretion to recommend a CEP declination based on weighing the severity of those circumstances and the company's voluntary self-disclosure, cooperation, and remediation. (d) As part of a CEP declination, the company must pay all disgorgement and forfeiture as well as restitution and victim compensation payments resulting from the misconduct. The disgorgement requirement prevents the company from profiting from the misconduct. It is important to note that a fine is not required. (e) All declinations will be made public.	

ACTIVITY	FEDERAL ELECTION CAMPAIGN ACT OF 1971, AS AMENDED ("FECA")	INTERNAL REVENUE CODE OF 1986, AS AMENDED ("I.R.C.")
CONSEQUENCES OF VIOLATIONS		
	(f) Part II of the CEP, entitled "Near Miss" Voluntary Self-Disclosure or Aggravating Factors Warranting Resolutions, provides for non-prosecution agreements. If a company fully cooperated and timely and appropriately remediated but it is ineligible for a declination under Part I solely because (i) it acted in good faith by self-reporting the misconduct but that self-report did not qualify as a voluntary self-disclosure under Appendix B of the CEP, and/or (ii) it had aggravating factors that warrant a criminal resolution, the DOJ shall: (A) Absent particularly egregious or multiple aggravating circumstances, provide a non-prosecution agreement; (B) Allow a term length of fewer than three years; (C) Not require an independent compliance monitor; and (D) Provide a reduction of at least 50% but not more than 75% off the low end of the U.S. Sentencing Guidelines fine range. The breadth of the range means that companies with aggravating circumstances face more negotiation risk and less predictable outcomes. (g) For example, a self-report does not qualify as a voluntary self-disclosure if the company disclosed only after, unbeknownst to the company, the DOJ had already become aware of the misconduct from a report by a whistleblower, and the company self-reports later than 120 days after receiving the whistleblower's internal report. As another	

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CONSEQUENCES OF VIOLATIONS		
	example, the DOJ determines that the disclosure was not reasonably prompt. (h) The CEP allows a disclosure for which the company does not have a pre-existing obligation to disclose the misconduct to the DOJ. Thus, a disclosure is still voluntary if the company had a pre-existing obligation to disclose arising from other obligations, such as industry-specific regulations. (i) If a company is not eligible for Part I or Part II, prosecutors have the discretion to determine the appropriate resolution including form (deferred prosecution agreement, non-prosecution agreement, or guilty plea), term length, compliance obligations, and monetary penalty. (j) For the monetary penalty, the company will not receive, and the DOJ will not recommend to a sentencing court, a reduction of more than 50% off the fine under the U.S. Sentencing Guidelines. Prosecutors will have discretion to determine the specific percentage reduction but there will be a presumption that the reduction will be taken from the low end of the Sentencing Guidelines range for companies that fully cooperate and timely and appropriately remediate. Otherwise, prosecutors will determine the starting point in the range based on the particular facts and circumstances of the case, including (but not limited to) the company's recidivism. In exercising discretion to determine the	

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CONSEQUENCES OF VIOLATIONS		
	monetary penalty, prosecutors will consider the factors under U.S.S.G. §8C2.8. (k) Full cooperation means: (i) disclosing all relevant non-privileged facts, including facts about all individuals involved regardless of rank; (ii) attributing facts to specific sources and witnesses; (iii) sharing relevant information even when not asked; (iv) preserving and producing documents, including those located abroad; (v) deconflicting witness interviews with the DOJ's investigation; and (vi) making officers and employees available for interviews. (l) Timely and appropriate remediation requires the company to: (i) conduct a root-cause analysis and address the causes; (ii) implement an effective compliance and ethics program; (iii) appropriately discipline employees, including those identified by the company as responsible for the misconduct, either through direct participation or failure in oversight, as well as those with supervisory authority over the area in which the criminal conduct occurred; (iv) retain business records, including controls over personal and ephemeral messaging platforms; and (v) take other steps showing it accepts responsibility and has reduced the risk of subsequent misconduct. (m) To increase the likelihood of the availability of the CEP, companies should establish and maintain effective compliance programs and robust whistleblower protections. In this manner the company is more likely to discover and	

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CONSEQUENCES OF VIOLATIONS		
	report misconduct, and provide the DOJ with new information. (n) Finally, nothing in the CEP is intended to prohibit the exercise of prosecutorial discretion to decline prosecution consistent with Justice Manual §§9-2.020, 27.260 & 28.300 et al. 11. (a) The U.S. Department of Justice Criminal Division, Evaluation of Corporate Compliance Programs (Updated September 2024) sets forth the criteria prosecutors should use in making informed decisions as to whether and to what extent, the corporation's compliance program was effective at the time of the offense, and is effective at the time of a charging decision or resolution, for purposes of determining the appropriate: (i) form of any resolution or prosecution; (ii) any monetary penalty; and (iii) the compliance obligations in any corporate criminal resolution, e.g., monitorship or reporting obligations. An important part of the evaluation criteria are the compensation structures and consequence management, the policies for the use of personal devices and communication platforms, including ephemeral messaging applications, and the impact of new technologies, especially artificial intelligence ("AI"), on commercial operations and compliance programs. U.S. Department of Justice Criminal Division, Evaluation of Corporate Compliance Programs (Updated September 2024) (available at. https://www.justice.gov/criminal/criminal-fraud/page/file/937501/dl?inline).	

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CONSEQUENCES OF VIOLATIONS		
	(b) Prosecutors may consider whether: (i) a company has incentivized compliance by designing compensation systems that defer or escrow certain compensation tied to conduct consistent with company values and policies; (ii) the company has enforced contract provisions that permit the company to recoup previously awarded compensation if the recipient of the compensation is found to have engaged in or to be otherwise responsible for corporate wrongdoing; and (iii) provisions for recoupment or reduction of compensation due to compliance violations or misconduct are maintained and enforced in accordance with company policy and applicable laws. (c) Positive incentives, such as promotions, rewards, and bonuses for improving and developing a compliance program or demonstrating ethical leadership, can drive compliance. Prosecutors should examine whether a company has made working on compliance a means of career advancement, offered opportunities for managers and employees to serve as a compliance "champion," or made compliance a significant metric for management bonuses. In evaluating whether the compensation and consequence management schemes show a positive compliance culture, prosecutors should consider the human resources process, disciplinary measures, consistent application, and a financial incentive system that rewards compliance-promoting behavior and punishes noncompliant or unethical conduct.	

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CONSEQUENCES OF VIOLATIONS		
	(d) Prosecutors should assess whether the company's complaint-handling process includes proactive measures to create a workplace atmosphere without fear of retaliation, appropriate processes for the submission of complaints, and processes to protect whistleblowers. Prosecutors should also assess whether the company trains employees on internal anti-retaliation policies and external anti-retaliation and whistleblower protection laws. (e) Prosecutors should consider a corporation's policies and procedures governing the use of personal devices, communications platforms, and messaging applications (including standard text messaging, third-party encrypted messaging applications, and ephemeral messaging applications, such as WhatsApp, Signal, and Telegram). Policies should ensure that, as appropriate and to the greatest extent possible, business-related electronic data and communications are accessible and amenable to preservation by the company. Prosecutors should consider how the policies and procedures have been communicated to employees, and whether the corporation has enforced the policies and procedures on a regular and consistent basis. (f) Prosecutors should determine whether a corporation's policy allows the company to review business communications on personal devices and messaging applications, and whether employees are required to transfer messages from messaging applications to company recordkeeping systems in order to preserve and retain them.	

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CONSEQUENCES OF VIOLATIONS		
	Prosecutors should also evaluate whether there are consequences for employees who refuse to provide access to business data on personal devices, the impact of the use of ephemeral messaging applications on the company's evaluation of employees' compliance with company policies and procedures, and whether any employees have been disciplined for refusing to provide such access. (g) When content from personal devices or noncompany-provided messaging applications has not been produced during an investigation, prosecutors will request information regarding the company's preservation and deletion policies, its ability to access personal devices, and whether the content is stored on corporate devices or servers. Whether a company has preserved and produced communications from personal devices and ephemeral messaging applications will affect the offer it receives to resolve criminal liability. (h) Companies that operate in multiple jurisdictions will likely find it difficult to implement a consistent policy on messaging applications and communication platforms in all jurisdictions. Multinational corporations will have to address local data privacy laws, blocking statutes, and employment and securities-related rules that may conflict with the DOJ's guidelines on messaging applications and communication platforms. Accordingly, companies should review their data privacy and communication policies to determine whether they are consistent with the DOJ's guidelines, and if not, whether the company can revise its	

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CONSEQUENCES OF VIOLATIONS		
	policies to satisfy both local law and the DOJ's guidelines. If the company is unable to do so, it should take mitigating steps to the extent permissible under local law. (i) Prosecutors should consider: (i) whether the company has a process for identifying and managing emerging internal and external risks that could potentially impact the company's ability to comply with the law, including any risks related to the use of new technologies; (ii) how the company assesses the potential impact of new technologies, such as AI, on its ability to comply with criminal laws; and (iii) whether management of risks related to use of AI and other new technologies is integrated into broader enterprise risk management strategies. (j) For companies that use AI for significant commercial operations or compliance programs, prosecutors may inquire as to: (i) which AI uses are high risk; (ii) the process for determining that the benefits of high risk AI uses outweigh the risks, and whether this process assesses the risks of malicious or unintended uses of AI, such as through stress testing; and (iii) whether high risk uses are monitored on an ongoing basis, and significant deviations in the AI's performance are promptly detected and remedied. (k) If a company's use of AI leads to significant compliance issues or fails to identify and remedy those issues, prosecutors will likely review the resources allocated to AI risk management and compliance in making charging	

ACTIVITY	FEDERAL ELECTION CAMPAIGN ACT OF 1971, AS AMENDED ("FECA")	INTERNAL REVENUE CODE OF 1986, AS AMENDED ("I.R.C.")
CONSEQUENCES OF VIOLATIONS		
	decisions. If those resources are small in comparison to the resources allocated to other areas with a similar risk profile, or as a proportion of the resources for the AI used in commercial operations, prosecutors may find the compliance program is not adequately resourced. (l) Companies should consider taking the following steps for their Compliance Programs: (i) Ensure that the compliance function is adequately staffed and funded. (ii) Ensure that the company has sufficiently strong and accessible reporting and investigative functions. (iii) Provide clear, consistent, and continual messaging to all employees on the company's policies on compliance. (iv) Review performance criteria to ensure that compliance-promoting criteria are part of employees' key performance indices. Companies should review employment and severance agreements and bonus and equity compensation plans to determine whether they should provide for clawbacks. (v) Ensure that compensation programs reward employees who meet compliance key performance indices, and penalize those who do not.	

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CONSEQUENCES OF VIOLATIONS		
	(vi) Adopt measures to track disciplinary actions and incentives to ensure consistent application of compliance policies throughout the organization. (vii) Incorporate education on disciplinary actions and incentives into compliance trainings. (viii) Conduct periodic assessments on the effectiveness of the company's responses to compliance violations. See Brian Benjet, Katrina Hausfeld, Janelly Crespo & Gianna De Lizza, DLA Piper, "DOJ Launches Pilot Program on Compensation Incentives and Clawbacks: Top Points for Compliance Professionals" (March 6, 2023) (available at https://dlapiper.com/en/insights/publications/2023/03/us-doj-announces-pilot-program-on-compensation-incentives-and-clawbacks#); Jaclyn Whittaker, Martha Stolley & Amy Schuh, Morgan Lewis & Bockius LLP, "Planning For DOJ's Compensation Pilot Program," Law360 (March 9, 2023) (available at https://www.law360.com/articles/1583949/print?section=securities). 12. (a) On March 3, 2023, the DOJ Criminal Division issued its Compensation Incentives and Clawbacks Pilot Program (available at https://www.justice.gov/opa/speech/file/1571906/download). It is a three-year initiative effective March 15. 2023 that	

ACTIVITY	FEDERAL ELECTION CAMPAIGN ACT OF 1971, AS AMENDED ("FECA")	INTERNAL REVENUE CODE OF 1986, AS AMENDED ("I.R.C.")
CONSEQUENCES OF VIOLATIONS		
	applies to all corporate matters handled by the Criminal Division of the DOJ (the "Pilot Program"). (b) During the Pilot Program, every corporate resolution must include a requirement that the resolving company implement criteria related to compliance in its compensation and bonus system. During the term of the resolution, the company must annually report to the Criminal Division on its implementation of the criteria. (c) The criteria may include without limitation: (i) a prohibition on bonuses for employees who do not satisfy compliance performance requirements; (ii) disciplinary measures for employees who violate applicable law and others who both (A) had supervisory authority over the employee(s) or business area engaged in the misconduct and (B) knew of, or were willfully blind to, the misconduct; and (iii) incentives for employees who demonstrate full commitment to compliance processes. (d) One commentator points out the difficulty of factoring compliance into bonus calculations: To advance an ethical culture, the DOJ wants companies to reward compliant behavior with affirmative metrics. This may be easier said than done. Setting goals is simple enough. But factoring compliance into bonus calculations can be subjective and difficult.	

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CONSEQUENCES OF VIOLATIONS		
	How do companies conclude employees "demonstrate full commitment to compliance processes?" Investigation and audit data is available. But that path leads to clawbacks. And while top and bottom performers might stand out, the middle is vast. So, managers turn to observation, feedback, and staff self-assessment. Ultimately, they end up trying to prove a negative. And guesstimating the dollars. [Mary Kohler, "DOJ Incentives Pilot Takes Carrot-Stick Approach to Compliance," US Law Week (Bloomberg Law May 9, 2023) (available at https://www.bloomberglaw.com/bloomberglawnews/us-law-week)] (e) When a criminal resolution is warranted, if a company fully cooperates and timely and appropriately remediates, and demonstrates it has implemented a program to recoup compensation from employees who engaged in wrongdoing, or others who both (i) had supervisory authority over the employee(s) or business area engaged in the misconduct, and (ii) knew of, or were willfully blind to, the misconduct, and has in good faith initiated the process to recoup such compensation before the time of resolution, an additional fine reduction may be warranted. See also U.S. Department of Justice Criminal Division Corporate Enforcement Note: Report on the Pilot Program Regarding Compensation Incentives and Clawbacks (Nov. 2024) ("Based on the success of the Compensation Pilot, we are directing our prosecutors to highlight the Compensation	

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CONSEQUENCES OF VIOLATIONS		
	Pilot and other compliance-related policies early in an investigation, which ensures that companies that have not yet incorporated compliance into their core compensation or review metrics have the opportunity to start that process during our investigations and allows companies that have such metrics to consider the effectiveness of these metrics and other compliance-related policies. This is one step that should position companies to show their progress toward the end of the investigation when we are evaluating their remediation efforts and the effectiveness of their compliance program at the time of a charging decision.") (available at https://www.justice.gov/criminal/corporate-enforcement-note-compensation-incentives-and-clawbacks-pilot). (f) In such circumstances, Criminal Division prosecutors shall accord, in addition to any other reduction available under an applicable policy, a reduction of the fine in the amount of 100% of any compensation that is recouped during the period of the resolution. The company gets to keep any recouped compensation, and does not have to turn it over to the government. Any fine reduction afforded under the Pilot Program does not affect any restitution, forfeiture, disgorgement, or other agreed-upon payment obligation of the company. (g) The Criminal Division shall determine in its sole discretion the presence or absence of a company's good faith. For example, attempts to recoup compensation against only a certain class of individuals, such as whistleblowers or	

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CONSEQUENCES OF VIOLATIONS		
	those suspected or cooperating with the government, may evince a company's bad faith. (h) At the time of resolution, the company must pay the full amount of the otherwise applicable fine ("Original Fine") less 100% of the amount of compensation the company is attempting to clawback ("Possible Clawback Reduction"). At the conclusion of the resolution term, if the company has not recouped the full amount it sought to clawback, the company must pay the Possible Clawback Reduction minus 100% of the compensation actually recouped. (i) If the company's good faith attempt to recoup compensation is unsuccessful, prosecutors in their discretion may accord a reduction of up to 25% of the amount of compensation the company attempted to clawback such that the company must at the conclusion of the resolution term make an additional fine payment of the Possible Clawback Reduction less the determined reduction percentage of the compensation sought. Such reductions may be warranted if a company incurred significant litigation costs for shareholders, or can show it is highly likely that it will successfully recoup the compensation shortly after the end of the resolution term. (j) Neither the U.S. Dept. of Justice, Criminal Division, Evaluation of Corporate Compliance Programs nor the Pilot Program provides a carve-out for laws in foreign jurisdictions that restrict recoupment of incentive awards,	

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CONSEQUENCES OF VIOLATIONS		
	such as China, France, and Singapore. Companies should review their recoupment policies to determine whether they are consistent with the DOJ's guidelines, and if not, whether the company can revise its policies to satisfy both local law and the DOJ's guidelines. If the company is unable to do so, it should take mitigating steps to the extent permissible under local law. 13. (a) On October 4, 2023, in a speech at the 22nd Annual Compliance & Ethics Institute of the Society of Corporate Compliance and Ethics, Deputy Attorney General Lisa Monaco announced a new Department of Justice safe harbor policy for voluntary self-disclosure for criminal misconduct an acquiror discovers in merger and acquisition targets. The policy is set forth in the Justice Manual 9-28.600 and 9-28.900. Office of Public Affairs, U.S. Department of Justice, "Deputy Attorney General Lisa O. Monaco Announces New Safe Harbor Policy for Voluntary Self-Disclosures Made in Connection with Mergers and Acquisitions," Oct. 4, 2023 (available at https://www.justice.gov/opa/speech/deputy-attorney-general-lisa-o-monaco-announces-new-safe-harbor-policy-voluntary-self). (b) Under the policy, acquirors that self-disclose criminal misconduct discovered during their preacquisition due diligence of the target, or their post-acquisition integration of the target, will receive the presumption of a declination of prosecution. Acquirors must self-disclose misconduct	

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CONSEQUENCES OF VIOLATIONS		
	within six months after the date of closing, cooperate with the ensuing investigation, and remediate within one year after the date of closing. As part of remediation, restitution and disgorgement, and a public recitation of the facts, are required. The six month period does not apply when companies discover misconduct involving national security or ongoing or imminent harm. In these situations, companies must self-disclose upon discovery. Acquirors that do not satisfy the deadlines for self-disclosure face successor liability for the target's misconduct. (c) The deadlines are subject to a reasonableness analysis and may be extended depending on the circumstances and complexity of the transaction. (d) The policy does not apply to misconduct required to be disclosed by law, already publicly known, or previously discovered by or disclosed to the Department of Justice. In addition, the policy does not apply to civil merger enforcement, and other enforcement and regulatory authorities, such as other federal agencies and foreign, state, and local authorities. (e) The presence of aggravating factors at the target, such as executive participation in the misconduct, significant profits from the misconduct, or egregious or pervasive misconduct, does not affect the acquiror's ability to receive a declination. However, aggravating factors may prevent the target from receiving a declination based on the acquiror's self-	

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CONSEQUENCES OF VIOLATIONS		
	disclosure. In addition, the target's misconduct does not affect the acquiror's recidivist analysis at the time of disclosure and in the future. (f) The policy applies throughout the Department of Justice. Each component may tailor the policy to fit its enforcement mandates while complying with its overarching guidelines. (g) An acquiror should conduct thorough risk-based preacquisition due diligence, and a risk-based post-acquisition audit of the target as soon as practicable. In this manner, the acquiror will maximize its ability to discover misconduct early in the transaction and satisfy the deadlines. (h) An acquiror should ensure that its code of conduct and compliance policies apply to the target as soon as practicable after the closing. (i) Under the U.S. Department of Justice Criminal Division, Evaluation of Corporate Compliance Programs (Updated September 2024), a well-designed compliance program should include comprehensive due diligence of any acquisition target, as well as a process for timely and orderly integration of the acquired entity into existing compliance structures and internal controls. Prosecutors should assess: (i) the role of compliance and risk management in the design and implementation of post-transaction integration; (ii) how the company incorporates the new business into its compliance and risk management functions; and (iii)	

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CONSEQUENCES OF VIOLATIONS		
	whether the company performs post-acquisition audits at the newly acquired entity. See generally Andrew K. Jennings, "The Market for Corporate Criminals," 40 Yale Journal on Regulation 520, 564 (Summer 2023) ("Under an amnesty approach, high-compliance buyers would be incented to self-report, even if doing so would lead to investigative costs, because a declination would avoid may, if not all, the problems associated with criminal M&A. Because it requires a buyer to actively address and remediate its compliance lemon, DOJ's FCPA policy [of a presumption of a declination] also reduces the risk that the acquired company's culture of noncompliance contaminates the combined culture. By incenting self-reporting, culpable individuals − who prosecutors prefer to pursue versus corporations that have 'no soul to damn nor body to kick' − are more likely to be identified. And finally, the policy's privileging of buyers that have high compliance quality reduces the potential for misconduct synergies to be achieved by low-compliance firms acquiring other low-compliance firms. As a result, compliance-enhancing M&A bids can play on a more even field with compliance-reducing bids.") (footnotes omitted). Kristie Blase, "DOJ Bribery Declination Offers Blueprint for Global Medtech M&A," Bloomberg Law News (April 14, 2026) ("The more a diligence review uncovers unknown or poorly documented third-party relationships, the less likely ordinary reps and warranties alone will solve the problem.	

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CONSEQUENCES OF VIOLATIONS		
	Sellers should expect buyers to ask for a longer survival period for compliance representations, a narrower cap on excluded claims, and covenants requiring document preservation, regulator cooperation, and continued remediation through closing. The more opaque the third-party footprint, the more leverage the buyer has to demand a special indemnity, tighter disclosure schedules, and a longer survival period for anti-corruption reps. If the target can't document the consultant or distributor relationships cleanly, the buyer is likely underwriting the risk as a live liability rather than a legacy issue, which almost always means a lower valuation or a heavier contingent-payment structure.").	
	14. (a) On April 15, 2024, the Criminal Division of the Department of Justice adopted its Pilot Program on Voluntary Self-Disclosures for Individuals (available at https://www.justice.gov/criminal/media/1347991/d1?inline). The Program offers non-prosecution agreements to individuals who voluntarily disclose actionable, original information about a corporation's criminal conduct that might otherwise go undetected or be impossible to prove. (b) The individual must provide material, nonpublic information relating to: (i) money laundering and related fraud and compliance offenses; (ii) violations by financial institutions related to the integrity of financial markets, including money laundering, registration of money transmitting businesses, and fraud against or compliance	

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CONSEQUENCES OF VIOLATIONS		
	with financial institution regulators; (iii) foreign corruption or bribery, including violations of the Foreign Corrupt Practices Act, the Foreign Extortion Prevention Act, and associated money laundering; (iv) healthcare fraud and illegal kickbacks; (v) fraud related to federally funded contracting; or (vi) bribery of domestic public officials. (c) The following persons are ineligible for the Program: (i) CEOs and CFOs of public or private companies; (ii) domestic government officials and law enforcement employees; (iii) foreign government officials; (iv) individuals who have engaged in criminal conduct involving violence, use of force, threats, substantial patient harm, any sex offense involving fraud, force, or coercion, or relating to a minor, or any offense involving terrorism; (v) the organizer/leader of the scheme; and (vi) individuals who have a previous felony conviction or a conviction for conduct involving fraud or dishonesty. (d) The individual must satisfy the following requirements: (i) The individual must make truthful and complete disclosure to the Criminal Division of nonpublic information that was not previously known to any DOJ employee. The individual must disclose all information known to him or her, including the full extent of the individual's role in the misconduct. The individual must also fully cooperate and disclose all information about any other matters about which the DOJ may inquire.	

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CONSEQUENCES OF VIOLATIONS		
	(ii) The disclosure must be voluntary, which means there is: (A) no prior government inquiry or request related to the subject of the disclosure; (B) no preexisting disclosure obligation to any federal agency; and (C) no government investigation or threat of imminent disclosure to the government or the public. (iii) The individual must provide substantial assistance in the government's investigation and prosecution of at least one individual or entity that is at least as culpable as him or her. Substantial assistance means providing truthful testimony, producing documents or other evidence when requested, and working proactively under the supervision of U.S. law enforcement. (iv) The individual must agree to forfeit and disgorge any profits from wrongdoing and pay restitution or victim compensation. (e) The DOJ retains the discretion to offer a non-prosecution agreement if all the foregoing requirements are not fully satisfied. It is also likely that prosecutors retain the discretion to determine whether an individual's assistance was substantial enough to permit participation in the Program. (f) An individual's ability to obtain a non-prosecution agreement may incentivize whistleblowers to bypass internal company reporting channels and go directly to the DOJ.	

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CONSEQUENCES OF VIOLATIONS		
	The Program encourages a race to the DOJ to be first in line for voluntary self-disclosure credit. This is because both the individual and the company must provide the DOJ with original information to obtain the full benefit of voluntary self-disclosure. The employee involved in the misconduct will want to be first to avoid prosecution; and the employee who inadvertently discovers misconduct will want to be first to get a share of any asset forfeiture. (g) Companies should understand that conducting an internal investigation and interviewing employees before the company self-discloses may lead one or more of the implicated individuals to self-disclose before the company completes its evaluation of the evidence and determines whether it should self-disclose. (h) The risk that a whistleblower will disclose to the DOJ before the company does is not insignificant, and the company should carefully evaluate this risk in deciding whether it should self-disclose. Companies can best position themselves by having policies and procedures in place that encourage internal reporting of misconduct, and by making prompt determinations of whether the company should self-disclose. Finally, companies should review and update their internal controls for detecting misconduct and consider a rewards program for internal reporting. 15. (a) A corporation can indemnify its PAC's officers and employees for fines, judgments, and settlements resulting	

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CONSEQUENCES OF VIOLATIONS		
	from PAC activities. The indemnification is treated as a permissible payment of PAC administrative expenses, and not an impermissible corporate contribution. 11 C.F.R. §114.5(b); FEC Advisory Opinion 1991-35; FEC Advisory Opinion 1980-135. A corporation can pay the premiums for insurance for liability and indemnification of its PAC's officers and members. This payment is also treated as a permissible payment of PAC administrative expenses, and not an impermissible contribution. FEC Advisory Opinion 1979-42. See also Treas. Reg. §1.527-6(b)(1) (fundraising, overhead, and recordkeeping expenses, and expenses allowed by FECA or similar state statute, are not expenditures subject to the Section 527(f) tax on exempt function expenditures). (b) If a nonprofit corporation wishes to indemnify its PAC's officers and employees, whether by an employment agreement, the corporation's bylaws or other corporate governance documents, or a general policy that applies to all employees or a particular group of employees, it must determine whether the indemnification is void as against public policy under the applicable state nonprofit statute. 16. (a) In the infamous Thompson Memorandum, the United States Department of Justice considered a corporation's indemnification of an employee's attorney's fees as showing a lack of cooperation with the government, which was an important factor in the government's decision of whether to indict the corporation. Larry D. Thompson, Deputy	

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CONSEQUENCES OF VIOLATIONS		
	Attorney General, U.S. Department of Justice, "Principles of Federal Prosecution of Business Organizations," at 5 (Jan. 20, 2003) ("Another factor to be weighed by the prosecutor is whether the corporation appears to be protecting its culpable employees and agents. Thus, while cases will differ depending on the circumstances, a corporation's promise of support to culpable employees and agents, either through the advancing of attorney's fees,[4] through retaining the employees without sanction for their misconduct, or through providing information to the employees about the government's investigation pursuant to a joint defense agreement, may be considered by the prosecutor in weighing the extent and value of a corporation's cooperation. By the same token, the prosecutor should be wary of attempts to shield corporate officers and employees from liability by a willingness of the corporation to plead guilty. [4]Some states require corporations to pay the legal fees of officers under investigation prior to a formal determination of their guilt. Obviously, a corporation's compliance with governing law should not be considered a failure to cooperate.") (available at http://www.justice.gov/dag/cftf/corporate_guidelines.htm). (b) In United States v. Stein, 435 F. Supp. 2d 330 (S.D.N.Y. 2006), the court held that the Thompson Memorandum violated a defendant's Fifth Amendment due process rights and Sixth Amendment right to counsel:	

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CONSEQUENCES OF VIOLATIONS		
	"It [the Thompson Memorandum] discourages and, as a practical matter, often prevents companies from providing employees and former employees with the financial means to exercise their constitutional rights to defend themselves. It does so in the face of state indemnification statutes that expressly permit business entities to provide those means because the states have determined that legitimate public interests may be served. It does so even where companies obstruct nothing and, to the contrary, do everything within their power to make a clean breast of the facts to the government and to take responsibility for any offenses they may have committed. It therefore burdens excessively the constitutional rights of the individuals whose ability to defend themselves it impairs and, accordingly, fails strict scrutiny. The legal fee advancement provision violates the Due Process Clause. . . . . The Thompson Memorandum on its face and the USAO's actions were parts of an effort to limit defendants' access to funds for their defense. Even if this was not among the conscious motives, the Memorandum was adopted and the USAO acted in circumstances in which that result was known to be exceptionally likely. The fact that events were set in motion prior to indictment with the object of having, or with knowledge that they were likely to have, an unconstitutional effect upon indictment cannot save the government. This conduct, unless justified, violated the	

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	Sixth Amendment. [435 F. Supp. 2d at 364, 366 (footnotes omitted)]. (c) To reach the result in Stein, the trial court had to assert ancillary jurisdiction over the state law contract dispute between KPMG, a nonparty, and the defendants over KPMG's obligation to pay the defendants' attorney's fees. On appeal, in Stein v. KPMG, LLP, 486 F.3d 753, 763 (2d Cir. 2007), the Second Circuit vacated the trial court's order asserting ancillary jurisdiction as beyond its power, and provided the following guidance on the available remedies: [E]ven if there were constitutional violations and even if KPMG is contractually obligated to advance appellees' attorneys' fees and costs, creating an ancillary proceeding to enforce that obligation was not the proper remedy. If the government's coercion of KPMG to withhold the advancement of fees to its employees' counsel constitutes a substantive due process violation, or has deprived appellees of their qualified right to counsel of choice, more direct (and far less cumbersome) remedies are available. Assuming the cognizability of a substantive due process claim and its merit here, dismissal of the indictment is the proper remedy. As for the Sixth Amendment deprivation, if it turns out that the government's conduct separates appellees from their counsel of choice (an event that has not yet occurred), appellees may seek relief on appeal if they are convicted. We do not mean to exclude the possibility of other forms of relief. If, for example, a Sixth Amendment violation is the result of	

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	ongoing government conduct, the district court of course may order the cessation of such conduct. Having said that, we hold, however, that the remedies available to the district court in the circumstances presented here did not include its novel exercise of ancillary jurisdiction. See generally Robert G. Morvillo & Robert J. Anello, "Ancillary Jurisdiction in Criminal Cases," New York Law Journal, at 3, 6 (June 5, 2007). (d) On remand, the trial court held three of the defendants were deprived by the government's actions of the counsel they chose, and as a result of those actions, "they simply lack the resources to engage the lawyers of their choice, lawyers who had represented them as long as KPMG was paying the bills." United States v. Stein, 495 F. Supp. 2d 390, 421 (S.D.N.Y. 2007) (footnote omitted). In addition, these three defendants and nine other defendants "have been forced by KPMG's cutoff of defense costs to curtail the defenses they would have mounted had KPMG paid those costs." 495 F. Supp. 2d at 423. Accordingly, dismissal of the indictment was the appropriate remedy. (e) On August 28, 2008, the Second Circuit in United States v. Stein, 541 F.3d 130 (2d Cir. 2008), upheld the dismissal of all charges against all the defendants: We hold that KPMG's adoption and enforcement of a policy under which it conditioned, capped and ultimately ceased advancing legal fees to defendants followed as a direct	

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CONSEQUENCES OF VIOLATIONS		
	consequence of the government's overwhelming influence, and that KPMG's conduct therefore amounted to state action. We further hold that the government thus unjustifiably interfered with defendants' relationship with counsel and their ability to mount a defense, in violation of the Sixth Amendment, and that the government did not cure the violation. Because no other remedy will return defendants to the status quo ante, we affirm the dismissal of the indictment as to all thirteen defendants. In light of this disposition, we do not reach the district court's Fifth Amendment ruling. [541 F.3d at 136 (footnote omitted)] 17. In an apparent display of Divine Providence, on August 28, 2008, the same day that the Second Circuit issued its decision in United States v. Stein, the United States Department of Justice issued the Filip Memorandum. The Filip Memorandum establishes the following guidelines in Section 9-28.730 of the United States Attorneys' Manual (Principles of Federal Prosecution of Business Organizations) for prosecutors to evaluate a corporation's cooperation and the payment of its employees' attorney's fees in deciding whether to charge a business entity: In evaluating cooperation, however, prosecutors should not take into account whether a corporation is advancing or reimbursing attorneys' fees or providing counsel to employees, officers, or directors under investigation or indictment. Likewise, prosecutors may not request that a corporation refrain from taking such action. This	

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CONSEQUENCES OF VIOLATIONS		
	prohibition is not meant to prevent a prosecutor from asking questions about an attorney's representation of a corporation or its employees, officers, or directors, where otherwise appropriate under the law.[6] Neither is it intended to limit the otherwise applicable reach of criminal obstruction of justice statutes such as 18 U.S.C. §1503. If the payment of attorney fees were used in a manner that would otherwise constitute criminal obstruction of justice — for example, if fees were advanced on the condition that an employee adhere to a version of the facts that the corporation and the employee knew to be false — these Principles would not (and could not) render inapplicable such criminal prohibitions. [6] Routine questions regarding the representation status of a corporation and its employees, including how and by whom attorneys' fees are paid, sometimes arise in the course of an investigation under certain circumstances — to take one example, to assess conflict-of-interest issues. Such questions can be appropriate and this guidance is not intended to prohibit such limited inquiries.	