

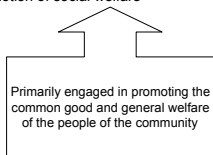


Key Rules for 501(c)(4) Nonprofits

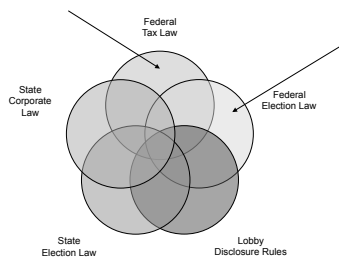
July 28, 2011
Nashville, TN

“Social welfare organization”

- Not organized or operated for profit
- Must be operated exclusively for the promotion of social welfare

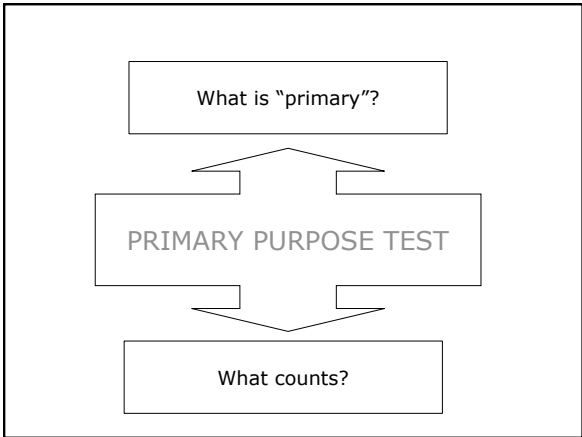


What is
a 501(c)(4)?



Regulation of
501(c)(4)s





No precise standard

Increased scrutiny

PRIMARY PURPOSE TEST

May be the PRIMARY PURPOSE
 All 501(c)(3) permissible activities
 Lobbying

May NOT be the PRIMARY PURPOSE
 Partisan political activity
 Unrelated business activities
 Social activities for members
 Activities for the common business interests of members
 Activities for the private benefit of members or partisan interests

What is a
PRIMARY PURPOSE?

- Contributions are NOT tax deductible as charitable contributions
- Private foundations must exercise expenditure responsibility when giving grants
- Public charities may not give unrestricted gifts
- Contributors may deduct membership dues if they are an ordinary and necessary business expense, but
- Portion of dues that funds lobbying and partisan political activity is not deductible as an ordinary and necessary business expense

501(c)(4) Fundraising

501(c)(4) must tell members what % of dues, if any, it allocated to lobbying and political expenditures.

IF not

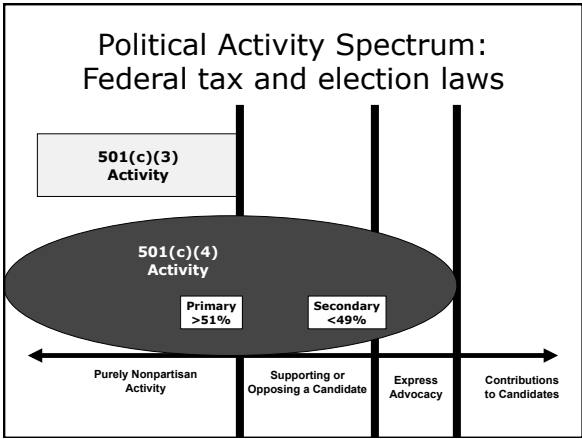
501(c)(4) may be subject to a tax equal to 35% of its lobbying expenditures

UNLESS

90% of dues/contributions are received from entities paying less than \$50
 or
 90% or more of membership dues come from 501(c)(3) sources

PROXY TAX

- May engage in unlimited lobbying
 - Must comply with applicable federal/ state/local lobbying disclosure rules
 - 501(c)(4) that receives federal grant, loan or award (but not contract) is prohibited from all lobbying
- 501(c)(4) Lobbying**



- Unique Names
- Bylaws and/or Articles
- Separate EIN
- Separate Bank account
- Boards of Directors
- Cost-Sharing Agreement

AFFILIATED
Organizations

General **RULES** for affiliated organizations

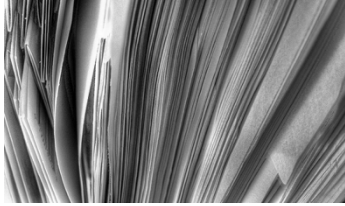
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FEDERAL ELECTIONS LAW

**Federal Election Law:
BEFORE Citizens United**

- Cash & in-kind contributions
 - 11 C.F.R. § 114.2(b)
- Express advocacy
 - 11 C.F.R. §100.22
- Electioneering communications
 - 11 C.F.R. § 100.29
- Coordinated communications
 - 11 C.F.R. §109.21



Federal Election Law:
NOW

- Cash & in-kind contributions
 - 11 C.F.R. § 114.2(b)
- Express advocacy
 - 11 C.F.R. §100.22
- Electioneering communications
 - 11 C.F.R. § 100.29
- Coordinated communications
 - 11 C.F.R. §109.21



Express Advocacy



A communication is
"express advocacy" if
it...

Includes so-called
magic words...
"support,"
"oppose," "elect,"
"defeat," etc.
11 C.F.R. § 100.22(a)

OR

"Could only be
interpreted by a
reasonable person
as advocacy for or
against the election
of [a] clearly
identified candidate"
11 C.F.R. § 100.22(b)

Express Advocacy



- Candidate endorsements
- Signs/posters/ads encouraging people to vote for identified candidates
- Candidate guides that suggest which candidate is better on the issues
- Voter registration drives in support of a candidate or party
- Encouraging people to donate to a particular candidate


Communications to the public that

- 1. Contain express advocacy, and**
- 2. Are NOT coordinated with a campaign**

Independent Expenditures



Electioneering Communications

- A broadcast, cable, or satellite communication that: 
- Refers to a clearly identified federal candidate;
- Is distributed within 30 days before the primary or convention, or 60 days before the general election; and **TV or radio, not Internet**
- Is targeted to the relevant electorate (for House and Senate races)

Coordinated Communications



- Communication is coordinated when it is:
 - Paid by a person other than the candidate;
 - Satisfies at least one content standard; and
 - Satisfies at least one conduct standard

Coordinated Communications



- | <u>Content</u> | <u>Conduct</u> |
|--|--|
| <ul style="list-style-type: none">▪ Electioneering communication▪ Materials prepared by a candidate;▪ Express advocacy; or▪ Targeted public communication featuring a candidate or party within a certain timeframe | <ul style="list-style-type: none">▪ Request or suggestion;▪ Material involvement;▪ Substantial discussion;▪ Information shared through common vendor; or▪ Information shared through former employee or independent contractor |

Disclaimer Requirements

- Independent Expenditures & Electioneering Communications

"Paid for by" disclaimer identifying the speaker and its contact info and stating that communication was not authorized by any candidate or committee is required

TV: Leave up for 4 seconds / 4% of vertical picture height
TV and radio: "_____ is responsible for the content of this advertising."

Disclosure Requirements

Independent Expenditures (11 CFR 109.10):

- Quarterly, 48-hour, and 24-hour reports (FEC Form 5)
- Must itemize expenditures once \$250 threshold met
- Must itemize > \$200 contributions given for independent expenditures

Electioneering Communications (11 CFR 104.20):

- 24-hour reports based on \$10,000 thresholds (FEC Form 9)
- Must itemize direct expenses
- Must itemize all \$1000 contributions for the year (may set up separate fund)

State Election Laws vs. FECA

- State election laws often differ from FECA
- Most state laws regulate ballot measure activity as election-related activity
- In many states, corporations may engage in more electoral activity than federal law permits
 - In many states, including Tennessee, corporations (including 501(c)(4)s) *may* make contributions to state or local candidates, within limits
 - Corporations often required to register as political committees

So...now what?

- 501(c)(4) organizations may
 - Endorse candidates, and publicize endorsement (as long as no coordination)
 - Make statements in favor of or in opposition to candidates
 - Publish comparative ads for candidates
 - Publicize names of candidates who sign or refuse to sign
 - Make cash contributions to ballot measure campaigns
 - Support or oppose candidates/parties during voter registration/GOTV drives
 - Candidate appearances probably still limited to general public (since coordinated)

BUT
Don't forget about
tax rules...

QUESTIONS?



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