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

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STATUTORY PROVISIONS ON CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING		
	1. A corporation cannot make a contribution or expenditure in connection with any federal election from corporate treasury funds. 2 U.S.C. §441b(a); 11 C.F.R. §114.2(b). 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"). 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. 2 U.S.C. §431(9)(B)(ii). Nonpartisan means that no effort is made to determine the party or candidate preference of individuals 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. 2 U.S.C. §441b(b)(2) and (c). 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 (60) 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	1. Under the Internal Revenue Code of 1986, as amended (the "Code"), a Section 501(c)(3) organization is defined 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). 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; IRS Publication 1828, Tax Guide for Churches and Religious Organizations, at 7 (September 2006). 3. The Section 501(c)(3) prohibition against campaign intervention has been upheld against First Amendment attack. Branch Ministries, Inc. v. Rossotti, 211 F.3d 137 (D.C. Cir. 2000); Christian Echoes National Ministry, Inc. v. United

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	electorate. 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). (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. 2 U.S.C. §434(f)(3)(C); 11 C.F.R. §100.29(a)(5). FECA does not expressly 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 (30) 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	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). 4. A 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). 5. 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 5 and 6 of the I.R.C. column for "Voter Registration And Get-Out-The-Vote Drives."

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	apparent by unambiguous reference. 2 U.S.C. §431(18). The regulations provide that "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 (October 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. (d) An electioneering communication includes a grassroots lobbying communication by a Section 501(c)(3) organization that requests listeners to contact their Congressional representative regardless of whether the communication describes the representative's position on the issue. (e) Legislators can use the prohibition on electioneering communications to enact legislation harmful to a Section 501(c)(3) organization during the Covered Period knowing that the organization will find it difficult to organize public opposition. (f) An electioneering communication does not include any communication that is publicly disseminated over the Internet,	

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	or in print media, including a newspaper or magazine, handbill, brochure, bumper sticker, yard sign, poster, billboard, and mailings. 11 C.F.R. §100.29(c)(1). See generally Federal Election Commission, "Electioneering Communications" (March 2007) (available at http://www.fec.gov/pages/brochures/electioneering.shtml). 5. FECA does not limit the ability of a corporation to air issue advertisements that do not refer to a clearly identified federal candidate. For issue advertisements that do so, FECA prohibits them only if they are aired during the Covered Period. 6. The prohibition against using corporate treasury funds for electioneering communications does not allow 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. 2 U.S.C. §§434(f)(7) and 441b(c)(5). 7. The United States Supreme Court upheld FECA's electioneering communication provisions against First Amendment attack in McConnell v. FEC, 124 S. Ct. 619, 688-89 (2003): 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	

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	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 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	

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	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 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.	

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	104, 108-114 (1972). Thus, the constitutional objection that persuaded the Court in Buckley 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." 124 S. Ct. at 762. 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. In FEC v. Wisconsin Right to Life, Inc., No. 06-969, the United States Supreme Court will address the issue of whether 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. Since Senator Feingold was a candidate in the September 3, 2004 primary, the ads triggered the	

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	electioneering prohibition during the thirty days prior to the primary. 10. (a) When grassroots lobbying is directed to voters in a particular area, and refers to a political party or a clearly identified federal candidate, a Section 501(c)(3) or 501(c)(4) organization's discussions with federal officeholders regarding the grassroots lobbying can result in coordinated communication with federal candidates. (b) Coordinated communications are treated as in-kind contributions, which incorporated Section 501(c)(3) and 501(c)(4) organizations cannot make. An expenditure for a coordinated communication is treated as a contribution to a candidate when "it is made by any person in cooperation, consultation, or concert, with, or at the request or suggestion of," that candidate, that candidate's authorized committee, or their agents. 2 U.S.C. §§441a(a)(7)(B)(i); 11 C.F.R. §§109.20(a) and 109.21(a)-(g). (c) 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 when (i) a federal candidate solicits funds for organizations described in Code Section 501(c) that have applied for or been granted tax-exempt status; (ii) the solicitation is a general solicitation for a Section 501(c) organization that does not engage in activities with respect to an election, or the	

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	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; (iii) 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; (iv) the announcement does not promote, support, attack, or oppose the candidates participating the announcements; and (v) 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. 11 C.F.R. §§109.21(g) and 300.65; FEC Advisory Opinion No. 2006-10. (d) The Palm Springs Desert Resorts Convention and Visitors Authority, an unincorporated organization that promotes tourism from Los Angeles and Orange Counties, would not make a coordinated communication when Representative Mary Bono served as its spokesperson and host of a thirty minute infomercial to be aired for eight months when the infomercial would not (i) be received by 50,000 or more persons in Representative Bono's district; (ii) disseminate, distribute, republish, in whole or in part, campaign materials prepared by Representative Bono, her authorized committee, or their agents; (iii) expressly advocate the election or defeat of Representative Bono or any other federal candidate; and (iv) be broadcast in Representative Bono's district within	

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	ninety days of the general election. 11 C.F.R. §109.21(c); FEC Advisory Opinion No. 2006-29. 11. In McConnell v. FEC, 124 S. Ct. 619, 694 (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." 12. 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." 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. 2 U.S.C. §441i(e)(1)-(2); 11 C.F.R. §§300.60 to 65; FEC Advisory Opinion No. 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 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) provides that the restrictions of 2 U.S.C. 441i(e)(1)(B) do not apply to the solicitation, receipt, or	

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	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").	

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	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. 2 U.S.C. §441i(d); 11 C.F.R. §§300.11, 300.37, 300.50, and 300.51. (b) Federal election activity is (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 month on activities in connection with a federal election. 2 U.S.C. §431(20)(A). (c) Generic campaign activity means a campaign activity that promotes or opposes a political party, and does not promote a	1. No statutory or regulatory provisions. 2. In T.A.M. 200044038 (November 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 October 4, 1996. There were also mailings in July and August of 1996 and 3 mailings in September, 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. 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 19 and 20 of the I.R.C. column for

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	federal or nonfederal candidate. 2 U.S.C. §431(21). (d) The FEC has issued regulations defining "voter registration activity" as "contacting individuals by telephone, in person, or by other individualized means to assist them in registering to vote. Voter registration activity includes, but is not limited to, printing and distributing registration and voting information, providing individuals with voter registration forms, and assisting individuals in the completion and filing of such forms." 11 C.F.R. §100.24(a)(2). (e) The FEC has issued regulations defining "get-out-the-vote activity" as "contacting registered voters by telephone, in person, or by other individualized means, to assist them in engaging in the act of voting. Get-out-the-vote activity includes, but is not limited to: (i) Providing to individual voters information such as the date of the election, the times when polling places are open, and the location of particular polling places; and (ii) Offering to transport or actually transporting voters to the polls." 11 C.F.R. §100.24(a)(3). (f) 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).	"Regulatory Provisions On Contributions, Expenditures, And Electioneering." 3. The IRS has 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 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.

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	(g) 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 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). (h) 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 (30) day period. A telephone bank is more than 500 telephone calls of an identical or substantially similar nature within any thirty (30) day period. General public political advertising does not include communications over the Internet, except for communications placed for a fee on another person's Website. The placement of advertising for a	

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	fee includes all potential forms of advertising, such as banner advertisements, streaming video, pop-up advertisements, and directed search results. 2 U.S.C. §431(22)-(24); 11 C.F.R. §§100.26 to 100.28; Preamble to Final Rules on Internet Communications, 71 F.R. 18,589,18,594 (April 12, 2006). (i) 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). (j) In McConnell v. FEC, 124 S.Ct. 619, 678-80 (2003), the United States Supreme Court upheld against constitutional attack the prohibition on solicitation of contributions to the specified Section 501(c) organizations. The Court held that the "solicitation restriction is closely drawn to prevent political parties from using tax-exempt organizations as soft-money surrogates." 124 S. Ct. at 679. The Court also held that to avoid constitutional problems, it would construe the	

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	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." 124 S. Ct. at 682. 2. The FEC has issued regulations defining solicit and direct in 11 C.F.R. §300.2(m)-(n) 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 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 constitute 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,	

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	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 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 constitute solicitations: (A) "Please give $100,000 to Group X." (B) "It is important for our State party to receive at least	

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	$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." (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	

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	stage." (L) The candidate will be very pleased if we can count on you for $10,000." (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 do not constitute 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."	

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	(C) At a Labor Day rally, the candidate says: "Thank you for your past financial support of the Republican Party." (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	

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	Section 501(c)(3) organizations when unscrupulous party 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. 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. (c) Chairman Joel Hefley and Ranking Minority Member Alan B. Mollohan of the House Committee on Standards of Official Conduct on May 19, 2004 issued the following statement on fundraising: "Recently it was reported in the news media that the Committee on Standards of Official Conduct has 'cleared' House Members to raise funds for	

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	charitable organizations during the national political conventions later this year. That report is not correct. Members are subject to a number of rules and standards in raising funds for charity, and any member contemplating involvement with charitable fundraising should contact the Committee for guidance addressed to his or her specific circumstances." (available at http://www.house.gov/ethics/Press_Statement_charity_events_conventions_5_04.html). See also Michael Slackman, "Organization Tied to G.O.P. Gets Warning on Donations," The New York Times, May 25, 2004, at B6 ("A tax-exempt organization associated with the chairman of the United States House Committee on Financial Services may have to register with the New York State attorney general's office before it can stage a party during the Republican National Convention in New York, state officials said. The organization, called the American Council for Excellence and Opportunity, had solicited donations from various businesses, including Wall Street firms, for a convention night party at the Rainbow Room in honor or the committee chairman, Representative Michael G. Oxley of Ohio, and other members of the committee. Mr. Oxley is also honorary chairman of the council. The Charities Bureau of the state attorney general's office sent a letter to the council on Friday that said the organization might have to register with the bureau - and then meet New York's disclosure requirements, which include making public exactly how the money it raised was spent, including staff salaries. 'If your	

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	organization is holding or administering charitable assets of any kind and/or conducting charitable activities in this state, it must register with the attorney general,' the letter said. The letter added that soliciting contributions in New York was also covered under the law. People affiliated with the organization said it was not a charity but rather a 'social welfare organization' under federal tax laws. Pamela Sederholm, a Virginia-based public relations consultant and officer of the group, said the council planned to raise money to hold a big-band dance night at the Rainbow Room in Rockefeller Center and then turn over to charity whatever money is left over. Though the council is not considered a charity by the federal government, it is possible that its activities would still require that it register with the Charities Bureau under New York law, according to the state attorney general's office. The attorney general's office said in its letter that if the council did not feel it was required to register, it should provide an explanation why"). 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 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 2 U.S.C. §441i(e)(1)(A)-(B). Accordingly, Representative Silvestre Reyes, whose	

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	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 No. 2003-20. 6. A Congressman, Tom Davis of the Eleventh District of Virginia, will appear in a public service announcement to benefit the National Kidney Foundation by promoting the Cadillac Invitational Golf Tournament. The announcement will air on cable systems in Northern Virginia, including the Eleventh District. The tournament is strictly a charitable fundraising event held annually to benefit the Foundation, and the Foundation does not engage in any activity in connection with an election. The announcement will not expressly advocate the Congressman's election, make any reference to his candidacy, nor will any signs, banners, or activities related to his campaign be visible in the background. The Foundation is responsible for the creation of the announcement, and the Congressman's office will pay for taping the announcement. The airtime is donated by the cable casting 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 No. 2004-14. 7. (a) A federal candidate or officeholder can make a specific solicitation for a Section 501(c) organization to conduct the	

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	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 solicitation is made only to individuals and the amount solicited from any individual during any calendar year does not exceed $20,000. 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). (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. 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	

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	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 do not conduct any election activity, but the candidate could not earmark or designate the contributions for any election 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 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 conduct election activity, including federal election activity under 11 C.F.R. §300.65(c), as their principal purpose. Since the funds were not raised in accordance with FECA, they could not be spent in connection with an election for federal office under 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 6 did not apply because the candidate was making a contribution, and not a solicitation. FEC Advisory Opinion No. 2003-32. 9. (a) 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	

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	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 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 monies subject to FECA's amount limits and source prohibitions. (b) The FEC opined that a federal candidate or officeholder can attend and speak at an NAHB forum to discuss national policy issues of importance to the industry for which the NAHB invites only representatives of firms or individuals who made contributions to the Voter Mobilization program. When solicitations will not occur at the forum, the federal candidate's or officeholder's attendance and speaking is not a solicitation subject to FECA. In addition, the federal candidate or officeholder can be listed as a "featured guest" in pre-event invitations, as long as the invitations do not solicit nonfederal funds. (c) NAHB also holds sporting events for its membership, such as golf events, to raise funds for its Voter Mobilization program. If NAHB's principal purpose is not to conduct election activities, a federal candidate or officeholder can make a general solicitation of funds for NAHB without regard	

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	to FECA's source prohibitions and amount limitations, and regardless of whether NAHB conducts election activities from time to time. To the extent that the federal candidate or officeholder solicits funds for the Voter Mobilization program, the solicitations can only be made to individuals for no more than $20,000 per individual. FEC Advisory Opinion No. 2003-5. (d) Since the solicitation rules for federal candidates or officerholders apply to Section 501(c) organizations, FEC Advisory Opinion No. 2003-5, which was addressed to a Section 501(c)(6) organization, also applies to Section 501(c)(3) and 501(c)(4) organizations. 10. A contribution received by a candidate in accordance with FECA, and any other donation received by an individual as support for the individual's activities as a federal officeholder, may be used for contributions to charitable organizations under Code Section 170(c). The contributions may not be converted by the organization to the personal use of the candidate or officeholder, and the candidate or officeholder cannot receive compensation from the organization before it expends the entire contribution. 2 U.S.C. §439a(a)-(b); 11 C.F.R. §§113.1(g) and 113.2. See also FEC Advisory Opinion No. 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-	

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	related events when Representative Granger will donate all royalties to two Section 501(c)(3) charitable organizations); FEC Advisory Opinion No. 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 No. 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 2 U.S.C. §441i(e)(l)); FEC Advisory Opinion No. 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 No. 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	

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	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)). 11. Members of the House of Representatives and their senior staff are prohibited from accepting 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, nor a parent, sibling, spouse, child, or dependent relative of the member, derives a financial benefit. House Rule XXV §1(c). Senate Rules prohibit all honoraria, including payments in lieu of honoraria to charitable organizations. Senate Rule XXXVI. 12. 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 No. 2004-25.	

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	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 No. 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). 2. A corporation, such as a Section 501(c)(4) organization, can create a separate segregated fund ("SSF"), otherwise known as a political action committee ("PAC"), for participation in federal campaigns. 2 U.S.C. §441b(b). The corporation is known as the PAC's connected organization. A PAC is created when (a) the governing body of the connected organization adopts a resolution creating the PAC; (b) the connected organization appoints persons to 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 the I.R.C. column, a Section 501(c)(3) organization can create a separately incorporated and affiliated Section 501(c)(4) organization, which can then create a PAC. 3. 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	1. Under Treas. Reg. §1.501(c)(3)-1(c)(3)(iii), participation or intervention 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. See also 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). CANDIDATE FOR PUBLIC OFFICE AND LOBBYING 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 (September 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.

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	members can refuse to contribute without reprisal. 11 C.F.R. §114.5(a)(3)-(4). 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. A minimum contribution cannot be specified. 11 C.F.R. §114.5(a)(2). 4. 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). 5. 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 No. 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 2 U.S.C. §441d). 6. 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 No. 2005-3. For this arrangement to pass muster	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 entitled, "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 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 a nominee

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	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. 7. (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 either the Section 501(c)(4) organization or the charitable organization. FEC Advisory Opinion No. 1989-7; FEC Advisory Opinion No. 1986-44. (b) The matching is not a 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). Rather, it is a permissible solicitation expense under 2 U.S.C. §441b(b)(2)(C). (c) The Section 501(c)(4) organization can allow its members or employees to choose from a list of four charities, or can designate a single charity if the member or employee does not choose from the list. FEC Advisory Opinion No. 1994-6. See also FEC Advisory Opinion No. 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 contributions were a permissible payment by collecting agent of costs	for appointive 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 activities. IRS Notice 88-76, 1988-2 C.B. 392; G.C.M. 39,694 (January 21, 1988); IRS Notice on Attempts to Influence Judicial Appointments 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). (b) The insubstantiality limitation is a facts and circumstances test. Haswell v. Commissioner, 500 F.2d 1133 (Ct. Cl. 1974) (insubstantiality limitation violated when organization spent 16-17% of its annual budget on lobbying activities), cert. denied, 419 U.S. 1107 (1975); Christian Echoes National Ministry, Inc. v. United States, 470 F.2d 849, 855 (10th Cir. 1972) ("The political activities of an organization must be

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	incurred in soliciting and transmitting contributions to the PAC under 11 C.F.R. §102.6(c)(2)(i)). See Paragraph 21 of the I.R.C. column for the IRS position on the effect of a matching program on the tax-exempt status of an affiliated Section 501(c)(3) organization, and the tax treatment of the matching program. 8. (a) A corporation, Anheuser-Busch Companies, Inc., established a matching charitable contribution program in which the employee designates the charity to receive the contribution. In addition, if the employee designates the United Way, the employee also receives credit for gifts from the corporation. If an employee donates $100 or more to the United Way, the employee receives a free case of beer. If an employee donates a certain percentage of his or her salary to the United Way, the employee receives a beer stein, plaque, or wall print. (b) This arrangement was permissible under a three-prong analysis. First, the matching contribution was permissible as long as no contributor to the corporation's PAC received a financial, tax, or other tangible benefit or premium from the corporation, PAC, or the charity. Second, the prizes were permissible "so long as they are not disproportionately valuable in relation to the contributions generated." FEC Advisory Opinion No. 2003-33. 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	balanced in the context of the objectives and circumstances of the organization to 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), cert. denied, 414 U.S. 864 (1973); Seasongood v. Commissioner, 227 F.2d 907 (6th Cir. 1955) (organization that spent less than five percent of its time and effort on legislative and political campaign activities did not violate insubstantiality limitation); G.C.M. 36,148 (January 28, 1975) ("[T]he percentage of the 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 5 (September 2006) ("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

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	contributed." 11 C.F.R. §114.5(b)(2). Third, "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." FEC Advisory Opinion No. 2003-33. 9. The maximum contribution that an individual can make to a PAC is $5,000 per calendar year, which is not indexed for cost-of-living adjustments. 2 U.S.C. §441a(a)(1)(C). During the two year election cycle beginning on January of an odd-numbered year and ending on December 31 of the next even-numbered year, an individual cannot contribute more than $37,500 to PACs. 2 U.S.C. §441a(a)(3)(B).	volunteer workers) and the expenditures devoted by the organization to the activity, when determining whether the lobbying activity is substantial"). (c) One way of dealing with the uncertainty of the facts and circumstances test is for a Section 501(c)(3) organizations to elect the safe harbor lobbying rules of Code Section 501(h). 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 (i) or (ii) above; and (iv) private foundations. I.R.C. §501(h)(3)-(5). 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 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

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		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"). (d) The United States Supreme Court has upheld the Section 501(c)(3) insubstantiality limitation on lobbying against First Amendment and equal protection attack. Regan v. Taxation With Representation, 461 U.S. 540, 544 (1983) ("It also appears that TWR can obtain tax deductible contributions for its non-lobbying activity by returning to the dual structure it used in the past, with a §501(c)(3) organization for non-lobbying activities and a §501(c)(4) organization for lobbying. TWR would, of course, have to ensure that the §501(c)(3) organization did not subsidize the §501(c)(4) organization; otherwise, public funds might be spent on an activity Congress chose not to subsidize"); Christian Echoes National Ministry, Inc. v. United States, 470 F.2d 849 (10th

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		Cir. 1972) (court upheld insubstantiality limitation against First Amendment attack), cert. denied, 414 U.S. 864 (1973). (e) A Section 501(c)(3) organization's activities in support of or in opposition to a nominee for appointive office are an exempt function under I.R.C. §527(e)(2), and its expenditures on these activities are subject to tax under I.R.C. §527(f). For a Section 501(c)(3) organization to avoid the tax, it must form a PAC to make the expenditures. I.R.C. §527(f)(3); John Francis Reilly and 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 24 and 25 for a discussion of the Section 527 tax. (f) 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. An attempt to influence legislation does not include (i) technical advice or assistance provided to a governmental body or to a committee or other subdivision thereof in response to a written request by such body or subdivision; (ii) making available the results of nonpartisan analysis, study, or research; and (iii) an appearance before, or

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		communication to any legislative body with respect to a possible decision of such body that might affect the existence of the private foundation, its powers and duties, its tax-exempt status, or the deduction of contributions to such foundation. I.R.C. §4945(d)(1)-(e). (g) A candidate for public office does not include a ballot measure. Treas. Reg. §1.501(c)(3)-1(c)(3)(ii). 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 formation trump this control? 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

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		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 AS PART OF EXEMPT PURPOSE 8. The IRS has found that political activity that is an integral part of a Section 501(c)(3) organization's functions in carrying out its exempt purpose is not prohibited campaign intervention in the following situations: (a) 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, does not violate the prohibition against political 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 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

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		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. But cf. T.A.M. 200446033 (November 12, 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 political intervention). See generally Davenport v. Washington Education Association, No. 05-1589 (United States Supreme Court June 14, 2007) (under First Amendment State of Washington may prohibit labor unions for public employees from using the agency-shop fees of a nonmember for election-related purposes unless the nonmember affirmatively consents); Pocatello Educational Association v. Heideman, Case No. CV-03-0256-E-BLW (D. Idaho 2005) (ban on political payroll deductions for employees of local governments, school districts, and private employers violates

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		the First Amendment; state can ban political payroll deductions for its own employees when the state pays any part of the cost of the payroll deduction program; "[T]he State has not articulated how prohibiting payroll deductions for political activities reduces either actual corruption or perceived corruption. Buckley analogized large campaign contributions to bribes, noting, persuasively, that hefty contributions are used to buy influence. 424 U.S. at 26-27. There was a clear link between limiting contributions and reducing the appearance of influence-peddling. No such link appears here. The VCA bans all political payroll deductions, no matter the size. The average payroll deduction for a union worker is certainly not large enough to be labeled as a 'bribe.' And there is no evidence, or even a common understanding, that corporate officials and union bosses are using the political payroll deduction to fund bribery or corruption"). (b) A university can provide facilities and faculty advisors to a student newspaper that publishes editorials on issues concerning candidates 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 views are those of the students and not the university. Rev. Rul. 72-513, 1972-2 C.B. 246. (c) As part of a political science course, a university can require a student to provide services to the campaign of a candidate of the student's choice. The university does not

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		control the student's campaign work, and is 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 should offer courses with this requirement only as an elective. (d) 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? (e) University X is a section 501(c)(3) organization. X publishes an alumni newsletter on a regular basis. Individual alumni are invited to send in updates about themselves which are printed in each edition of the newsletter. 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 (February 2006). The IRS also used this example in Rev. Rul. 2007-41, Situation 12, 2007-25 I.R.B. (June 18, 2007). (f) A Section 501(c)(3) mail-bundling organization formed to provide employment opportunities to the developmentally disabled can provide mailing services to political campaigns. PLR 9152039.

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		POLITICAL INTERVENTION AND ISSUE ADVOCACY 9. A Section 501(c)(3) organization can inform candidates of its positions on issues, and can urge candidates to publicly support its positions. 10. (a) The 2002 CPE Text takes the following position on the difference between permissible issue advocacy and prohibited campaign intervention: "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 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

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		Clinton?;" court upheld IRS revocation of church's tax-exempt status). (b)(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). 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. 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.

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		(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 IRS stated, "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 definition of exempt function in Paragraphs 25-34 below. 11. In IRS Fact Sheet 2006-17 (February 2006), the IRS provided the following example of the distinction between issue advocacy and 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

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		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 political campaign intervention 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, 2007-25 I.R.B. (June 18, 2007). See other examples from IRS Fact Sheet 2006-17 and Rev. Rul. 2007-41 in Paragraphs 30 and 34 below.

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		12. The IRS has rejected the express advocacy standard previously imposed on FECA by Buckley v. Valeo, 424 U.S. 1, 77 (1978), to determine prohibited campaign intervention under I.R.C. §501(c)(3). 2002 CPE Text, at 346-49. Since the IRS already rejected Buckley for Section 501(c)(3) purposes, the Supreme Court's rejection in McConnell of Buckley's distinction between express advocacy and issue advocacy for electioneering purposes should not affect the IRS position. For the holding of McConnell, see Paragraphs 7 and 8 of the FECA column for "Statutory Provisions On Contributions, Expenditures, And Electioneering." 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 (November 3, 2000) (political intervention does not hinge on whether the communication constitutes express advocacy for federal election law purposes; "[T]he letter 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) political intervention prohibition);

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		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"). AFFILIATED SECTION 501(c)(4) ORGANIZATIONS AND <u>RELATIONSHIP WITH SECTION 501(c)(3) ORGANIZATIONS</u> 13. A Section 501(c)(3) organization can create a separately incorporated and affiliated Section 501(c)(4) organization, which can then create a Section 527(f) political organization, generally known as a separate segregated fund ("SSF") under I.R.C. §527(f)(3), or a PAC. The PAC then makes contributions to candidates and political organizations. Treas. Reg. §1.527-6(f)-(g); Rev. Rul. 2004-6, 2004-4 I.R.B. 328, 329. 14. The Section 501(c)(4) organization should keep records and bank accounts separate from those of the Section 501(c)(3) organization. If there are overlapping paid directors, officers,

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		or employees, the organizations should reasonably allocate their time between the organizations based on the activities they work on for the respective organizations. Finally, the organizations should reasonably allocate other shared goods, services, and facilities. If these requirements are not satisfied, the IRS may seek to attribute the activities of the Section 501(c)(4) organization to the Section 501(c)(3) organization. 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, 461 U.S. 540, 552-53 (1983) (Blackmun, J., concurring); Treas. Reg. §1.527-2(b)(2) (an organization maintaining a 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. 15. 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

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		approve the PAC's board of directors; (b) the Section 501(c)(3) organization's assets, such as its equipment, facilities, goodwill, investments, mailing lists, and personnel, cannot be used by the PAC. If these assets are shared between the Section 501(c)(3) organization and the PAC, there must be reasonable allocations of expenses based on arm's length standards, and records kept to substantiate the allocations, such as time spent by shared employees working for each organization. In addition, the Section 501(c)(3) organization may have to make its mailing list available to other political organizations and candidates on the same terms; and (c) the directors, officers, and employees of the Section 501(c)(3) organization assisting the PAC must act in their individual capacity. See discussion in I.R.C. column for "Campaign Activities of Section 501(c)(3) Organization's Directors, Officers, and Employees." 16. The 2002 CPE Text contains an extensive discussion of the areas in which a Section 501(c) 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 IRC 501(c)(3) organization's exempt status. See e.g., PLR 2001-

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		03-084 (Oct. 24, 2000)." 2002 CPE Text, at 367. 17. (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 tax-exempt status when it establishes an affiliated taxable corporation with a similar name to carry on activities it could tax-exempt status when it establishes an affiliated taxable corporation with a similar name to carry on activities it could not carry on). (b) "An IRC 501(c)(3) organization's resources include

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		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. 18. Although the 2002 CPE Text takes the position that similarity of names does not violate the campaign intervention 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. See discussion in Paragraphs 3-5 of the I.R.C. column for "Campaign Activities Of Section 501(c)(3) Organization's Directors, Officers, And Employees." 19. 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 the PAC, such as a flier soliciting funds for the PAC. Similarly, a PAC should not notify donors of the PAC's

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		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. 20. 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 Paragraph 2 of the I.R.C. column for "Statutory And Regulatory Provisions On Contributions To And Fundraising For Section 501(c)(3) Organizations." 21. With respect to the charitable contribution/PAC matching program described in Paragraph 7 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. In addition, with respect to a for-profit corporation, the corporation is not entitled to a charitable deduction, and the

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		employee who makes a contribution to the PAC is not charged with the receipt of compensation income for the charitable contribution. G.C.M. 39,877 (September 8, 1992). REQUIREMENTS FOR SECTION 501(c)(4) ORGANIZATION 22. (a) A Section 501(c)(4) organization must be "operated exclusively for the promotion of social welfare." I.R.C. §501(c)(4). 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 "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); see also Rev. Rul. 67-368, 1967-2 C.B. 194. (b) The IRS has construed these provisions to mean that a Section 501(c)(4) organization can engage in political activity only if the political activity is not its primary activity, and complies with applicable election law. See Rev. Rul. 2004-6, 2004-4 I.R.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

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		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 (December 31, 1979); G.C.M. 36,286 (May 22, 1975); G.C.M. 33,495 (April 27, 1967). (c) The permissible political activities of a Section 501(c)(4) organization include the prohibited political activities of a Section 501(c)(3) organization. See the authorities cited in Paragraph 25. (d) The Section 501(c)(4) organization's political activity must not only not be its primary activity, but the political activity, together with all other nonsocial welfare activities, must not be the organization's primary activity. Other nonsocial welfare activities include investment activities, unrelated trade or business activities, social activities for members, and activities for the private benefit of members. 23. The IRS looks at all the facts and circumstances in determining an organization's primary activity. Rev. Rul. 68-45, 1968-1 C.B. 259. The most important ones are the portion of annual gross revenues and total expenses used for, and number of beneficiaries of, the organization's political activities and social welfare activities. People's Educational Camp Society 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; T.A.M. 200245064 (November 8, 2002). 24. (a) A Section 501(c)(4) organization that engages in campaign

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		intervention can expend funds for this purpose in two ways. First, it can expend funds from its general treasury. Second, it can form a PAC that expends the PAC's funds. (b) In the first situation, the Section 501(c)(4) organization is subject to tax on the lesser of its net investment income for the taxable year, and the amount expended on an exempt function in the taxable year. Tax is imposed at the highest rate specified in Code Section 11(b). I.R.C. §527(f)(1)-(2). (c) 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 electors are selected, nominated, elected, or appointed. I.R.C. §527(e)(2). Under the regulations, exempt function includes all activities that are directly related to and support these functions. Treas. Reg. §1.527-1(c)(1). (d) In the second situation, when a Section 501(c)(4) organization forms a PAC that expends the PAC's funds on campaign intervention, the PAC is treated as a separate political organization that is subject to tax under Code Section 527. I.R.C. §527(f)(3). Section 527(b)-(c) generally provides that political organizations that collect and expend funds on exempt functions are exempt from federal income tax on their exempt function income. They are subject to tax on their investment income, which does not include contributions and

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		fundraising proceeds. (e) A PAC is not taxable on exempt function income if it is derived from permissible sources, which are contributions, membership dues, and proceeds from political fundraising events and bingo games. I.R.C. §527(c)(3)(A)-(D). 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 is defined as "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 are derived from impermissible sources. Id. DEFINITION OF EXEMPT FUNCTION 25. (a) The critical issue in determining whether a Section 501(c)(4) organization is subject to the Section 527 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

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		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 individual to any Federal, State, or local public office or office in a political organization, or the election of Presidential or Vice-President electors, whether or not such individual or electors are selected, nominated, elected, or appointed." 26. The similarities and differences between Section 527(e)(2) exempt function and Section 501(c)(3) political 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 (February 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

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		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). (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.

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		(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 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 for a discussion of the definition of public office. 27. In Rev. Rul. 2004-6, 2004-4 I.R.B. 328, 330, the IRS ruled 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

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		electoral campaign; (c) The communication targets voters in a particular election; (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. 28. 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 27; (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 a legislative committee on the issue that is the subject of the

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		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. 2004-4 I.R.B. 328, 330. 29. Rev. Rul. 2004-6 provides 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 include solicitation of 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 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)

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		organization is as follows: 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 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

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		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 §527(e)(2) and, therefore, is subject to tax under §527(f)(1). 2004-4 I.R.B. 328, 331. 30. 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-

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		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 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 §527(e)(2) and, therefore, is subject to tax under §527(f)(1). 2004-4 I.R.B. 328, 331.

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		A similar example is found in IRS Fact Sheet 2006-17, Example 15 (February 2006), and Rev. Rul. 2007-41, Situation 15, 2007-25 I.R.B. (June 18, 2007), and which concludes that the organization has not engaged in political campaign intervention. 31. The third example for a Section 501(c)(4) organization is as follows: 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. 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

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		contrary to S's position. However, 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, therefore, is not subject to tax under §527(f)(1). 2004-4 I.R.B. 328, 332. 32. 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 of persons

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		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 §527(e)(2) and, therefore, is subject to tax under §527(f)(1). 2004-4 I.R.B. 328, 332. 33. The example for the Section 501(c)(5) labor organization is as follows: Situation 1. N, a labor organization recognized as tax-exempt

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		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 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

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		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 §527(e)(2) and, therefore, is not subject to tax under §527(f)(1). 2004-4 I.R.B. 328, 330-31. 34. 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 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

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		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 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

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		advertisement is not an exempt function expenditure under §527(e)(2) and, therefore, is not subject to tax under §527(f)(1). 2004-4 I.R.B. 328, 331. A similar example is found in IRS Fact Sheet 2006-17, Example 14 (February 2006), and Rev. Rul. 2007-41, Situation 14, 2007-25 I.R.B. (June 18, 2007), which concludes that the organization has not engaged in political campaign intervention. The IRS also pointed out that the advertisement does not mention the election or the candidacy of Senator C. 35. (a) A Section 501(c)(3) organization's campaign activities, when they are educational, nonpartisan, and do not violate the campaign intervention prohibition, can nevertheless violate the prohibition against serving a private interest. Treas. Reg. §1.501(c)(3)-1(d)(1)(ii); American Campaign Academy v. Commissioner, 92 T.C. 1053 (1989) (Section 501(c)(3) organization impermissibly benefited the Republican party through training school for campaign workers, a function previously conducted by the National Republican Congressional Committee; Section 501(c)(3) organization cannot confer a substantial benefit on particular political interests). (b) The requirement that a Section 501(c)(4) organization promote the common good and general welfare of the community, Treas. Reg. §1.501(c)(4)-1(a)(2)(i), likely means that the prohibition against private inurement applied in American Campaign Academy applies to Section 501(c)(4)

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		organizations. See 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 lies in the weight accorded the private benefits (i.e. the amount of private benefits), 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 appointive 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). (c) "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

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		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, 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

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		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 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. (d) The Foundation For Taxpayer And Consumer Rights sent a letter to Steven T. Miller, Director, Exempt Organizations Division of the IRS, requesting that the IRS investigate whether The California Recovery Team ("CRT"), a California nonprofit public benefit corporation founded by Governor Arnold Schwarzenegger, violated its Section 501(c)(4) status. The Foundation, citing American Campaign Academy, claimed that CRT operated primarily for the benefit of Governor Schwarzenegger and the Republican party's agenda. In support of its claim, the Foundation relied on the following: CRT's directors and offers are representative of the California

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		Republican party; its board includes a campaign consultant of the governor and members of his staff; its key personnel include the governor's attorney, who serves as CRT's executive director, and high-level campaign personnel; and receipt of financial support from the governor's campaign committees. Letter of The Foundation For Taxpayer And Consumer Rights to Steven T. Miller, Director, Exempt Organizations Division, Internal Revenue Service, May 25, 2004 (available at http://www.consumerwatchdog.org/corporate/fs/fs004300.php3).

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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 corporation can make registration and get-out-the-vote communications to the general public, provided that they do not expressly advocate the election or defeat of any clearly identified candidate(s), or candidates of a clearly identified political party. The corporation cannot coordinate with any candidate(s) or political party the preparation and distribution of these communications. A corporation can make these communications through posters, billboards, broadcasting media, newspapers, newsletters, brochures, or similar means of communication with the general public. 11 C.F.R. §114.4(c)(2). 2. A corporation can distribute to the general public, or reprint in whole and distribute to the general public, any registration or voting information, such as instructional materials, produced by official election administrators. A corporation can distribute official registration forms by mail to the general public, and if permitted by state law, absentee ballots to the general public. The corporation cannot, in connection with any such distribution, expressly advocate the election or defeat of any clearly identified candidate(s) or candidates of a clearly identified political party, and cannot encourage registration with any particular political party. 11 C.F.R. §114.4(c)(3); FEC Advisory Opinion No. 1980-55; FEC Advisory Opinion No. 1980-33; FEC Advisory Opinion No. 1980-2. 3. A corporation can support or conduct voter registration and get-out-the-vote drives aimed at the general public, including	1. Public charities can conduct nonpartisan voter registration and get-out-the-vote drives. T.A.M. 9117001 (April 26, 1991). 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"). 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, PLR 9223050, but should not use prior voter registration lists to target voters who are registered as

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	providing transportation to the places of registration or the polls in accordance with the following requirements: (a) 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 party; (b) The registration or get-out-the-vote drive is not coordinated with any candidate(s) or political party; (c) The registration drive is not directed primarily to individuals previously registered with, or intending to register with the political party favored by the corporation. The get-out-the-vote drive is not directed primarily to individuals currently registered with the political party favored by the corporation. Since a Section 501(c)(3) organization cannot favor a political party, this requirement is not an issue; (d) These services are made available without regard to the voter's political preference. Information and other assistance regarding registering or voting, including transportation and other services offered, are not withheld or refused based on support for or opposition to particular candidates or political party; (e) Individuals conducting the registration or get-out-the-vote drive are not paid on the basis of the number of individuals registered or transported who support one or more particular candidates or political party; and (f) The corporation notifies those receiving information or	belonging to a particular party. (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 (September 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 1984 election campaign, individuals

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	assistance of the requirements of (d) above. The notification must be made in writing at the time of the registration or get-out-the vote drive. 11 C.F.R. §114.4(d). 4. (a) MTV will conduct a "Prelection," an online survey of young people to determine who they think should be President. Voter education will be a critical part of the Prelection. The voter education activities will incorporate information on presidential candidates compiled by Project Vote Smart on the Chooseorlose.com Website, links to the presidential candidates' Websites, and links to nonpartisan sources of information on the Web. MTV may ask participating candidates to submit statements or position papers to MTV for either on-air or on-line usage. (b) Prelection participants will receive follow-up messages encouraging them to vote in the November general election and to continue to educate themselves about the candidates. These messages will be sent to all participants who are registered to vote in the general election, regardless of whom they "voted" for in the Prelection. These messages may refer to the results and analysis of the Prelection, but will not in any way be coordinated with any candidate or political party or political committee. (c) Follow-up communications to Prelection participants would be sent via electronic mail or text messages some time after the results of the Prelection were announced. Since these communications by themselves will not constitute promotion or publicizing of the Prelection programming, and	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 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; and (d) pay the costs of training sessions and issue workshops when advertisements state that the Section 501(c)(4) organization sponsors these activities. 4. The IRS in Fact Sheet 2006-17 (February 2006) provided the following examples of 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

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	given that these communications will be directed only to Prelection participants whose voting preferences have already been ascertained by MTV, the follow-up communications would not fall within the media exemption to the definition of contribution or expenditure. The FEC opined that such messages are corporate get-out-the-vote activities subject to 11 C.F.R. §114(c)(2). To the extent that the follow-up messages contain express advocacy, they would violate 2 U.S.C. §441b. (d) The FEC also opined that providing election-related educational materials at community events is not within MTV's press function. Therefore, the media exemption would not apply. MTV would be acting as a corporation when engaging in this activity. Thus, when providing voter registration and get-out-the-vote information at community events, MTV may not expressly advocate the election or defeat of a clearly identified candidate or political party. Likewise, MTV may provide vote guides that comply with 11 C.F.R. §114.4(c)(5). FEC Advisory Opinion No. 2004-7. 5. A corporation can make contributions to a Section 501(c)(3) organization whose sole purpose is to conduct voter registration drives. FEC Advisory Opinion No. 1980-92. 6. 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 No. 1991-17. 7. A corporation can pay for newspaper advertisements that	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, 2007-25 I.R.B. (June 18, 2007). 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 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

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	encourage the general public to register and vote. FEC Advisory Opinion No. 1980-20. 8. 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 the organization would be considered financed by the officeholder. FEC Advisory Opinion No. 2004-25.	Rev. Rul. 2007-41, Situation 2, 2007-25 I.R.B. (June 18, 2007). 5. Private foundations can make grants to a private foundation or public charity if: (a) the grant supports only nonpartisan activity; (b) the grant is not used for only one election period; (c) the activity supported by the grant is to be conducted in five or more states; (d) the private foundation 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; (e) the private foundation 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 is from any one exempt organization; and not more than half of its support comes from gross investment income; and (f) contributions to the private foundation 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. I.R.C. §4945(d)(2) and (f); Treas. Reg. §53.4945-3(b); PLR 9629025 and 9223050.

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		6. A private foundation does not have to exercise expenditure responsibility for the grants described in Paragraph 5. Treas. Reg. §§53.4945-3(b)(2) and 53.4945-5(a)(1). 7. 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 political intervention under Section 501(c)(3). IRS Information Letter 2004-0169 (December 9, 2004). 8. Private foundations can engage in nonpartisan election-related activities, other than voter registration drives, get-out-the-vote drives, voter education projects, and candidate forums, free of the limitations of Code Section 4945(d)(2). IRS Information Letter 2004-0169 (December 9, 2004). 9. The I.R.C. §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").

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VOTER GUIDES		
	1. A corporation can prepare and distribute to the general public voter guides consisting of two or more candidates' positions on campaign issues, including voter guides obtained from a Section 501(c)(3) or 501(c)(4) organization, provided that the voter guides comply with either subparagraph (a) or (b). The voter guide can include biographical information on each candidate, such as education, prior and current employment, offices held, and community involvement. (a) The corporation must not act in cooperation, consultation, or concert with or at the request or suggestion of the candidates, the candidates' committees or agents regarding the preparation, contents and distribution of the voter guide, and no portion of the voter guide may expressly advocate the election or defeat of one or more clearly identified candidate(s) or candidates of any clearly identified political party; or (b) (i) The corporation must not act in cooperation, consultation, or concert with or at the request or suggestion of the candidates, the candidates' committees or agents regarding the preparation, contents, and distribution of the voter guide; (ii) All the candidates for a particular seat or office are provided 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 are seeking the nomination of a particular political party in a contested primary election, or appear on the general election ballot in the state(s) in which the voter guide is distributed or appear on the general election ballot in	1. Distribution of voter guides, responses to candidate questionnaires, and incumbent voting records (often known as legislative score cards or report cards) is permissible 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) with respect to incumbent voting records, cover all legislators representing the organization's region, and not identify which incumbents are candidates for re-election; (d) with respect to voter guides and responses to candidate questionnaires, cover all candidates for a public office, or at least all viable candidates; (e) are not deliberately distributed to coincide with an election; (f) are distributed during a campaign in the same manner as during the year; and (g) 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 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.

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	enough states to win a majority of the electoral votes; (iii) No candidate may receive greater prominence in the voter guide than other participating candidates, or substantially more space for responses; (iv) The voter guide and its accompanying materials do not contain an electioneering message; and (v) The voter guide and its accompanying materials do not score or rate the candidates' responses in such a way as to convey an electioneering message. 11 C.F.R. §114.4(c)(5). 2. The validity of the regulations in Paragraph 1 is subject to challenge at least with respect to for-profit corporations. In Clifton v. FEC, 114 F.3d 1309 (1st Cir. 1997), cert. denied, 522 U.S. 1108 (1998), the court held that the regulatory provision requiring equal prominence for all candidates unlawfully curtailed the corporation's First Amendment rights. Clifton involved a Section 501(c)(4) nonprofit membership corporation, the Maine Right to Life Committee, that accepted corporate contributions and expended treasury funds on issue advocacy on pro-life issues. On remand, the district court found that the requirements of Paragraph 1(iv)-(v) were not severable from the provision invalidated by the First Circuit, and therefore were also invalid. Since Section 501(c)(3) organizations are subject to the Code's prohibition against political intervention, application of the regulations to them may not run afoul of the First Amendment. 3. (a) In its conciliation agreement, MUR 5634, the FEC addressed the circumstances in which a voter guide issued by	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 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. If the organization posts the document on its Website, access should be limited to a members only area. Cf. FEC Advisory Opinion No. 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 No. 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 2 U.S.C. §441d); FEC Advisory Opinion No. 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); (b) have an initial distribution shortly after the close of a legislative session, which shows an educational purpose,

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	the Sierra Club, Inc., a Section 501(c)(4) organization, constituted an impermissible corporate independent expenditure. (b) Under 2 U.S.C. §441b(a), a corporation cannot make an independent expenditure in connection with any federal election. An independent expenditure is an expenditure "expressly advocating the election or defeat of a clearly identified candidate that is made without cooperation or consultation with any candidate, or any authorized committee or agent of such candidate, and which is not made in concert with, or at the request or suggestion of, any candidate, or any authorized committee or agent of such candidate." 2 U.S.C. §431(7). (c) The FEC regulations define "expressly advocating" as a communication that uses phrases such as, "vote Pro-Life," or "vote Pro-Choice" accompanied by a listing of clearly identified candidates described as Pro-Life or Pro-Choice. 11 C.F.R. §100.22(a). In addition, the communication, when taken as a whole or with limited reference to external events, "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" it contains an "electoral portion" that is "unmistakable, unambiguous, and suggestive of only one meeting" and one as to which "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 kinds of action." 11 C.F.R. §100.22(b).	rather than a purpose to influence the outcome of an election; (c) not be deliberately distributed to coincide with an election; (d) be distributed during a campaign in the same manner as during the year; (e) not identify which incumbents are candidates for re-election, not compare incumbents, and not comment on a person's qualifications for public office; (f) cover all legislators representing the organization's region, and not focus on a legislators from a geographic area in which elections are held; (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; 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 "+"

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	(d) Prior to the November 2, 2004, general election, Sierra Club, Inc. produced and distributed a pamphlet entitled "Let your Conscience be your Guide" ("Conscience") containing text and photographs. (e) The "Conscience" pamphlet prominently exhorts the reader to "LET YOUR CONSCIENCE BE YOUR GUIDE …," accompanied by pictures of gushing water, picturesque skies, abundant forests, and people enjoying nature. The heading of the interior of the pamphlet exhorts the reader, "AND LET **YOUR VOTE** BE **YOUR VOICE"** (emphasis in original). (f) Underneath that exhortation, the pamphlet compares the environmental records of President Bush and Senator John Kerry and U.S. Senate candidates Mel Martinez and Betty Castor through checkmarks and written narratives. For example, in the category of "Toxic Waste Cleanup," it describes Senator Kerry as a "leader on cleaning up toxic waste sites," and states he co-sponsored legislation that would unburden taxpayers and "hold polluting companies responsible for paying to clean up abandoned toxic waste sites." In contrast, the description of President Bush's record on the same subject says, "President Bush has refused to support the 'polluter pays' principle, which would require corporations to fund the cleanup of abandoned toxic waste sites, including the 51 in Florida. Instead, he has required ordinary taxpayers to shoulder the cleanup costs." Similarly, under the subject of "Clean Air," Senator Kerry is described "support[ing] an amendment that would block President	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 (February 9, 1990) (Section 501(c)(3) 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 political intervention prohibition). 4. (a) In IRS Fact Sheet 2006-17 (February 2006), the IRS provided the following guidance on voter guides: • Whether the questions and any other description of the issues are clear and unbiased in both their structure and content. • Whether the questions posed provided to the candidates are identical to those included in the voter guide. • Whether the candidates are given a reasonable amount of time to respond to the questions. If the candidate is given limited choices for an answer to a question (e.g. yes/no, support/oppose), whether the candidate is also given a

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	Bush's change to weaken the Clean Air Act," and as co-sponsoring legislation "which would force old, polluting power plants to clean up." In contrast, President Bush's position on "Clean Air" is described as "weakening the law that requires power plants and other factories to install modern pollution controls when their plans are changed in ways to increase pollution." In each of three categories, the pamphlet assigns a "checkmark symbol" in one or two boxes next to either one or both candidates; of the two candidates, only Senator Kerry receives checkmarks in every box in all three categories (Toxic Waste Cleanup, Clean Air, and Clean Water), whereas President Bush receives only one checkmark in a single category (Clean Air), and in that category, there are two checkmarks for Senator Kerry. (g) To the right of the comparisons between Senator Kerry and Bush, the "Conscience" pamphlet compares the environmental records of U.S. Senate candidates from Florida, Mel Martinez and Betty Castor, in three categories. Ms. Castor's environmental record in all three categories is accompanied by a checkmark in all three boxes next to her position. In the "toxic waste cleanup" category, the pamphlets states, "Castor supports reinstating the 'polluter pays' principle to make corporate polluters, not U.S. taxpayers, pay to clean up abandoned toxic waste sites." In the "clean air" category, it states, "Castor has pledged to address air pollution by placing caps on carbon dioxide, sulfur dioxide, nitrogen oxide, mercury and other dangerous emissions." Finally, Ms. Castor's record in the "energy" category is described as supporting "a greater commitment to	reasonable opportunity to explain his position in his own words and that explanation is included in the voter guide. • Whether the answers in the voter guide are those provided by the candidates in response to the questions, including whether the candidate's answers are unedited, and whether they appear in close proximity to the question to which they respond. • Whether all candidates for a particular office are covered. • Whether the number of questions, and the subjects covered, are sufficient to encompass most major issues of interest to the entire electorate. In assessing whether a voter guide is unbiased and nonpartisan, every aspect of the voter guide's format, content and distribution must be taken into consideration. If the organization's position on one or more issues is set out in the guide so that it can be compared to the candidates' positions, the guide will constitute political campaign intervention. An organization may be asked to distribute voter guides prepared by a third party. Each organization that distributes one or more voter guides is responsible for its own actions. If the voter guide is biased, distribution of the voter guide is an act of political campaign intervention. Therefore, an organization should reach its own independent conclusion about whether a voter guide prepared by itself or prepared by a third party covers a broad scope of issues and uses neutral form and content. (b) The IRS deleted the language in subparagraph (a) above

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	alternative energy, such as wind and solar power and greater use of 'green' building practices." In contrast, Mr. Martinez does not receive any checkmarks. In the "toxic waste cleanup and "clean air" categories, Sierra Club, Inc. stated that for Mr. Martinez there was "no stance on record." Mr. Martinez's record in the "energy" category is described as "support[ing] the Energy Policy Act of 2003, which gave millions in subsidies to the oil and coal industries, but made minimal investments in clean alternative energy technologies." The pamphlet concludes with: "Find out more about the candidates before you vote. Visit www.sierraclubvotes.org." (h) The FEC concluded that the "Conscience" pamphlet provides "in effect" an explicit directive to vote for Senator Kerry and Betty Castor, because it contains language - "LET YOUR CONSCIENCE BE YOUR GUIDE … AND LET **YOUR VOTE** BE **YOUR VOICE" —** exhorting readers to vote for the candidates clearly favored by the Sierra Club as expressed through the checkmarks and accompanying narratives, *see* 11 C.F.R. § 100.22(a), and that the communication was unmistakable, unambiguous, and suggestive of only one meaning, and reasonable minds could not differ as to whether the pamphlet encourages readers to vote for Senator Kerry and Betty Castor or encourage some other kind of action. *See* 11 C.F.R. § 100.22(b). Accordingly, the FEC concluded that the "Conscience" pamphlet expressly advocated the election of clearly identified candidates.	in Rev. Rul. 2007-41, 2007-25 I.R.B. (June 18, 2007). 5. (a) IRS Publication 1828, Tax Guide for Churches and Religious Organizations (September 2006), provides the following guidance on voter guides: • A careful review of the following facts and circumstances may help determine whether or not a church or religious organization's publication or distribution of voter guides constitutes prohibited political campaign activity: • 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 - a neutral, unbiased and, complete compilation of all candidates' positions. Id. at 10. (b) IRS Publication 1828, Tax Guide for Churches and Religious Organizations (September 2006), contains the following examples of voter guides: Example 1: Church R distributes a voter guide prior to elections. The voter guide consists of a brief statement from

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		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 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. Id. at 10. 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

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		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. (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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ACTIVITY	FEDERAL ELECTION CAMPAIGN ACT OF 1971, AS AMENDED ("FECA")	INTERNAL REVENUE CODE OF 1986, AS AMENDED ("I.R.C.")
VOTER GUIDES		
		(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 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

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		candidate's position on the issue, it will reflect the candidate's position as "unknown" or "unclear." 7. The guideline in Paragraph 6(c) requiring the same questions for candidates for the same types of office prevents the framing of questions for particular states or districts so as to 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 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, 2007-25 I.R.B. (June 18, 2007) and

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		IRS Fact Sheet 2006-17, Example 8 (February 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 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. 11. An organization formed to promote public education engaged in prohibited campaign intervention when it conducted an objective review of the qualifications of school board

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		candidates, and announced the names of those it considered most qualified. 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.

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CANDIDATE APPEARANCES AND ADVERTISEMENTS		
	1. (a) A corporation can permit candidates and their representatives to appear on its premises or at a corporate function to address or meet a broad class of employees. If the corporation allows one candidate to appear, it must provide all candidates with the same opportunity. The FEC regulations do not require the corporation to extend the offer of an opportunity to appear to all candidates. Section 501(c)(4) organizations probably do not have to extend this offer to all candidates, but Section 501(c)(3) organizations subject to the campaign intervention prohibition should extend this offer to all candidates. 11 C.F.R. §114.4(b)(1)(i)-(ii). (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 No. 1999-2; FEC Advisory Opinion No. 1992-5. (c) The corporation can discuss with the candidate or the candidate's authorized committee the structure, format and timing of the candidate appearance and the candidate's positions on issues, but cannot discuss the candidate's plans, projects, or needs of the campaign. 11 C.F.R. §114.4(b)(vii). (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. 11 C.F.R. §114.4(b)(viii). Equal access means the	1. Candidates often seek permission to appear before the members of a Section 501(c)(3) organization, or the public, on 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; see also Rev. Rul. 2007-41, 2007-25 I.R.B. (June 18, 2007) and IRS Fact Sheet 2006-17 (February 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 neutral"); IRS Publication 1828, Tax Guide for Churches and Religious Organizations, at 8 (September 2006) (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

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	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, and allow all representatives of the news media to cover or carry the appearance, through the use of pooling arrangements if necessary. 11 C.F.R. §114.3(c)(2)(iv). 2. 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 of at least two candidates. FEC Advisory Opinion No. 1986-37. 3. (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 constitute 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	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 candidates equal access in accordance with the requirements of the Federal Communications Act of 1934. 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 endorses no 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. 3. (a) IRS Publication 1828, Tax Guide for Churches and Religious Organizations (September 2006), contains the following example of permissible candidate appearances: Example 1: Minister E is the minister of Church N. 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

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	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 restrict the presence of campaign banners, posters, balloons, and similar items. (c) A similar rule for public educational institutions, 11 C.F.R. §110.12, was applied in MUR 5392. 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 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	comments on their qualifications or any indication of a preference for any candidate. The actions do not constitute political campaign intervention by Church N. Id. at 9. A similar example is found in Rev. Rul. 2007-41, Situation 7, 2007-25 I.R.B. (June 18, 2007), and IRS Fact Sheet 2006-17, Example 7 (February 2006). It is important to note that this example is not a nonpartisan debate under FECA because there is not a face-to-face confrontation of at least two candidates. Thus, the FEC may take the position that the Church has made an impermissible in-kind contribution. See discussion in Paragraph 2 of the FECA column. (b) The IRS elaborated on the foregoing example in Fact Sheet 2006-17 (February 2006): Example 8: The facts are the same as in Example 7 except that there are four candidates in the race rather than three, and one of the candidates declines the invitation to speak. In the publicity announcing the dates for each of the candidate's speeches, Society N includes a statement that the order of the speakers was determined at random and the fourth candidate declined the Society's invitation to speak. President E makes the same statement in his opening remarks at each of the meetings where one of the candidates is speaking. Society N's actions do not constitute political campaign intervention. The IRS also used this example in Rev. Rul. 2007-41, Situation 8, 2007-25 I.R.B. (June 18, 2007). 4. In IRS Fact Sheet 2006-17 (February 2006), the IRS provided the following example of impermissible campaign

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	environment. In addition, the regulation did not prohibit collateral campaign events before or after a sponsored appearance independent of the educational institution. 4. (a) Two Members of Congress, one who is a candidate for re-election, and one a candidate for President, will 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 will be the general public, and most are not voters from the speaker's home district. The campaign committees of the speakers will hold concurrent campaign events at the same hotel as the convention. The speakers can 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, do not expressly advocate the nomination, election, or defeat of any candidate; (ii) anyone introducing the speakers does not discuss the candidacy except to briefly note the fact that the speaker is a candidate; (iii) there is no solicitation, making, or acceptance of contributions to the candidate's campaign or distribution of campaign materials at convention functions; (iv) any contribution from the National Right to Life's political committee to a candidate's campaign is not in consideration for the speaker's appearance at the convention; (v) if NRL knows that the candidates' campaign committees will sponsor collateral campaign events at the convention facilities during the convention, NRL does not use its general	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, Church O's actions constitute political campaign intervention. The IRS also used this example in Rev. Rul. 2007-41, Situation 9, 2007-25 I.R.B. (June 18, 2007), and IRS Publication 1828, Tax Guide for Churches and Religious Organizations, Example 2, at 9 (September 2006). 5. An incumbent or candidate can appear before a Section 501(c)(3) organization in a noncandidate capacity. IRS Publication 1828, Tax Guide for Churches and Religious Organizations (September 2006), provides the following guidelines: When a candidate is invited to speak at an event in a non-candidate capacity, it is not necessary for the church or religious organization to provide equal access to all political candidates. However, the church or religious organization

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	treasury funds to pay the travel costs for the candidates and their representatives and staff. NRL must notify each candidate that it cannot pay travel costs if the candidate holds a collateral campaign event; (vi) NRL does not use its general treasury funds to make expenditures for communications to announce or otherwise publicize campaign events when the communications are directed to the general public attending the convention; and (vii) any candidates who wish to advertise in the convention program book pay NRL in advance for 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 can do so regardless of whether the candidates use the tapes to promote their candidacies or to raise funds. An impermissible contribution would result if NRL were to distribute 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 is something of value to the candidates. NRL may sell the tapes to news organizations or the general public for the 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 to be held at or near the convention site before, during, or after the convention, the candidate speakers may participate in the	must ensure that: • the individual speaks only in a non-candidate capacity, • neither the individual nor any representative of the church makes any mention of his or her candidacy or the election, and • no campaign activity occurs in connection with the candidate's attendance. In addition, the church or religious organization should clearly indicate the capacity in which the candidate is appearing and should not mention the individual's political candidacy or the upcoming election in the communications announcing the candidate's attendance at the event. Id. at 9. See also 2002 CPE Text, at 381; 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). 6. The IRS described similar factors as those in Paragraph 5 in Rev. Rul. 2007-41, 2007-25 I.R.B. (June 18, 2007), but did not require that each factor be met: Candidates may also appear or speak at organization events in

ACTIVITY	FEDERAL ELECTION CAMPAIGN ACT OF 1971, AS AMENDED ("FECA")	INTERNAL REVENUE CODE OF 1986, AS AMENDED ("I.R.C.")
CANDIDATE APPEARANCES AND ADVERTISEMENTS		
	press conference to discuss pro-life issues and may be identified as candidates so long as (i) NRL does not endorse the candidates during the press conference; (ii) neither NRL and its agents nor the candidates and their agents expressly advocate the election or defeat of any clearly identified candidate during the press conference; and (iii) the NRL's disbursements for the press conference are de minimis. Disbursements are de minimis if notice of the press conference is distributed only to those news organizations NRL customarily contacts when holding press conferences for other purposes. FEC Advisory Opinion No. 1996-11. 5. 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, press conferences and rallies, are held nearby shortly before or after the event; and (g) the sponsoring organization pays any honorarium to the candidate and not the	a non-candidate capacity. For instance, a political candidate may be a public figure who is invited to speak 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 an organization-sponsored event does not, by itself, cause the organization to be engaged 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 the following: • Whether the individual is chosen to speak solely for reasons other than candidacy for public office; • Whether the individual speaks only in a non-candidate capacity; • Whether either the individual or any representative of the organization 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 organization maintains a nonpartisan atmosphere on the premises or at the event where the candidate is present; and

ACTIVITY	FEDERAL ELECTION CAMPAIGN ACT OF 1971, AS AMENDED ("FECA")	INTERNAL REVENUE CODE OF 1986, AS AMENDED ("I.R.C.")
CANDIDATE APPEARANCES AND ADVERTISEMENTS		
	campaign. FEC Advisory Opinion No. 1992-6 (appearance of Presidential candidate David Duke at Vanderbilt University) (cited in FEC Advisory Opinion No. 1996-11 discussed in Paragraph 4). See discussion of permissible fundraising activities by federal officeholders for Section 501(c)(3) and 501(c)(4) organizations in the FECA column for "Statutory and Regulatory Provisions on Contributions to and Fundraising for Section 501(c)(3) Organizations."	• 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. 7. In IRS Fact Sheet 2006-17 (February 2006), the IRS provided 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, 2007-25 I.R.B. (June 18, 2007), and a similar example in IRS Publication 1828, Tax Guide for Churches and Religious Organizations, Example 1, at 9 (September 2006). Example 11: Chairman H is the chairman of the Board of Hospital Q, a section 501(c)(3) organization. Hospital Q is

ACTIVITY	FEDERAL ELECTION CAMPAIGN ACT OF 1971, AS AMENDED ("FECA")	INTERNAL REVENUE CODE OF 1986, AS AMENDED ("I.R.C.")
CANDIDATE APPEARANCES AND ADVERTISEMENTS		
		building a new wing. Chairman H invites Congressman 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, 2007-25 I.R.B. (June 18, 2007). 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, 2007-25 I.R.B. (June 18, 2007). 8. If a member of the clergy is a candidate, and participates in a worship service as a candidate, the rules in Paragraphs 1 and 3 apply. If a member of the clergy is a candidate, and

ACTIVITY	FEDERAL ELECTION CAMPAIGN ACT OF 1971, AS AMENDED ("FECA")	INTERNAL REVENUE CODE OF 1986, AS AMENDED ("I.R.C.")
CANDIDATE APPEARANCES AND ADVERTISEMENTS		
		participates in a worship service solely as a member of the clergy and not as a candidate, the rules in Paragraph 5 apply. 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 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 to all candidates who wish to advertise. Rev. Rul. 74-574, 1974-2 C.B. 161; 2002 CPE Text, at 383. 10. A Section 501(c)(3) organization should not solicit ads from one candidate while only accepting ads from other candidates.

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ACTIVITY	FEDERAL ELECTION CAMPAIGN ACT OF 1971, AS AMENDED ("FECA")	INTERNAL REVENUE CODE OF 1986, AS AMENDED ("I.R.C.")
CANDIDATE APPEARANCES AND ADVERTISEMENTS		
		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.

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ACTIVITY	FEDERAL ELECTION CAMPAIGN ACT OF 1971, AS AMENDED ("FECA")	INTERNAL REVENUE CODE OF 1986, AS AMENDED ("I.R.C.")
CANDIDATE DEBATES		
	1. (a) A nonprofit organization described in I.R.C. §501(c)(3) or 501(c)(4) that does not endorse, support, or oppose candidates or political parties, can sponsor candidate debates in accordance with 11 C.F.R. §§110.13 and 114.4(f). 11 C.F.R. §110.13(a)(1). (b) 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). (c) 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 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). (d) 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 can contribute funds to a Section 501(c)(3) or 501(c)(4) organization to hold nonpartisan candidate debates	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 (15%) 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 composed by an independent, nonpartisan panel. The panel could include members of the Section 501(c)(3) organization, the media, and community leaders; (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

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ACTIVITY	FEDERAL ELECTION CAMPAIGN ACT OF 1971, AS AMENDED ("FECA")	INTERNAL REVENUE CODE OF 1986, AS AMENDED ("I.R.C.")
CANDIDATE DEBATES		
	in accordance with 11 C.F.R. §110.13. 11 C.F.R. §§114.1(a)(2)(x) and 114.4(f)(3). 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 No. 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. 2 U.S.C. §434(f)(3)(B)(iii); 11 C.F.R. §100.29(c)(4).	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 letter of 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 (September 2006), 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, • 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

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ACTIVITY	FEDERAL ELECTION CAMPAIGN ACT OF 1971, AS AMENDED ("FECA")	INTERNAL REVENUE CODE OF 1986, AS AMENDED ("I.R.C.")
CANDIDATE DEBATES		
		organization, and • whether a moderator comments on the questions or otherwise implies approval or disapproval of the candidates. Id. at 8-9.

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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 corporation can allow a candidate to use its facilities as long as it receives reimbursement 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). If a campaign committee uses corporate telephones, the reimbursement must include, in addition to the cost of the calls, a charge for the use of the facilities. FEC Advisory Opinion No. 1995-8; FEC Advisory Opinion No. 1978-34. 2. A corporation can allow a candidate to use its list of customers, clients, vendors, and employees 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). 3. 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	1. 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 since 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). The Section 501(c)(3) organization should also 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 by the organization. Finally, 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. See also Letter of Melanie Sloan, Executive Director, Citizens for Responsibility and Ethics in Washington, to Evelyn A. Petschek, Commissioner, Tax Exempt and Government Entities Division, Internal Revenue Service, June 25, 2004 ("[B]ecause neither the Bush campaign nor the Kerry campaign would have been able to rent office space in Citizen Works [a Section 501(c)(3) organization that rented space to the Nader campaign] as the space was never available on the open market, it appears that,

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		
	501(c)(4) organization. When exchanges of equal value occur, no contribution occurs. FEC Advisory Opinion No. 2002-14. 4. 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). 5. 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. A nominal fee paid by the individual for use of the room is not a contribution or expenditure. 2 U.S.C. §431(8)(B)(ii); 11 C.F.R. §§100.76 and 100.136. 6. A nonconnected multicandidate PAC will purchase from the publisher a sizeable number of copies of a novel written by Senator Barbara Boxer at a price that is less than the suggested retail price, but that is the standard price the publisher charges other large purchasers. Senator Boxer will sign each book, and the PAC will offer the book to any person who raises at least $100 for the PAC in a certain time period. The purchase of the books at a discount is not an in-kind	in violation of its tax status, Citizen Works is providing support for the Nader campaign") (available at http://citizensforethics.org/activities/20040625/letter.php). 2. IRS Publication 1828, Tax Guide for Churches and Religious Organizations (September 2006), states that in determining whether a church or religious organization engages in prohibited political intervention in its business transactions, some of the factors to be considered are: • whether the good, service, or facility is available to the candidates on an equal basis, • 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 • whether the activity is an ongoing activity of the organization or whether it is conducted only for the candidate. Id. at 10-11. 3. In IRS Fact Sheet 2006-17 (February 2006), the IRS provided the following example of the use of organization facilities: Example 17: 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

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		
	contribution by the publisher since the discounted items are made available in the ordinary course of business and on the same terms and conditions offered to the vendor's other customers that are not political committees. FEC Advisory Opinion No. 2006-1.	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, 2007-25 I.R.B. (June 18, 2007). 4. "An IRC 501(c)(3) organization that operates a noncommercial broadcast station is not required to permit 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.

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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		
		5. Rents for facilities should qualify for the rent exemption from unrelated business taxable income so long as no ancillary services are provided. I.R.C. §512(b)(3). 6. A Section 501(c)(3) organization can sell or lease its mailing list to all candidates and political organizations on the same terms, and should charge fair market rates to the candidate or political organization. The first sale or lease should not be to a candidate or political organization. In addition, the Section 501(c)(3) organization should use ordinary and prudent used in the direct mail fundraising industry to limit the overuse of its mailing list or contributor list. T.A.M. 200044038 (November 3, 2000). 7. The 2002 CPE Text provides that a Section 501(c)(3) organization that sells or leases its mailing list to certain candidates, without making it available to all other candidates, violates the prohibition against political 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, 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. 8. In IRS Fact Sheet 2006-17 (February 2006), the IRS provided

ACTIVITY	FEDERAL ELECTION CAMPAIGN ACT OF 1971, AS AMENDED ("FECA")	INTERNAL REVENUE CODE OF 1986, AS AMENDED ("I.R.C.")
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		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. 2007-41, Situation 18, 2007-25 I.R.B. (June 18, 2007). 9. (a) Income from mailing list leases should qualify for the royalty exemption from unrelated business taxable income. I.R.C. §512(b)(2); Sierra Club, Inc. v. Commissioner, 86 F.3d 1526 (9th Cir. 1996); Common Cause v. Commissioner, 112 T.C. 332 (1999); 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 (Spring 2005); 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

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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		
		decided in favor of the taxpayer should not be pursued." Memorandum from the IRS National Office to EO Area Managers (December 16, 1999), reprinted in 28 Exempt Organization Tax Review 141 (2000).

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ACTIVITY	FEDERAL ELECTION CAMPAIGN ACT OF 1971, AS AMENDED ("FECA")	INTERNAL REVENUE CODE OF 1986, AS AMENDED ("I.R.C.")
WEBSITE ACTIVITIES		
	1. A corporation cannot endorse a candidate on its Website. FEC Advisory Opinion No. 1998-22; FEC Advisory Opinion No. 1997-16. A corporation's publicly accessible Website can link to candidate Websites as long as the corporation does not normally charge nonpolitical organizations for links to their Websites. FEC Advisory Opinion No. 1999-17; FEC Advisory Opinion No. 1996-2. The FEC has issued a Notice of Proposed Rulemaking that would partially supersede these advisory opinions. 66 F.R. 50,358 (October 3, 2001). 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 No. 1996-2. 3. (a) In FEC Advisory Opinion No. 1999-25, the FEC concluded 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 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	1. A Section 501(c)(3) organization's Website can link to the homepages of all candidates for a public office. 2. 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. 3. A Section 501(c)(3) organization's Website can link to a related Section 501(c)(4) organization's homepage that does not contain prohibited campaign intervention. The related Section 501(c)(4) organization's homepage can link to political activity in another section of its Website, and can link to the Section 501(c)(3) organization's homepage. 4. When a Section 501(c)(3) organization and a related 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 must 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, nor should there be a navigation bar that contains these links. 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 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. Cf. Treas. Reg. §1.513-4(f), exs. 11 and

ACTIVITY	FEDERAL ELECTION CAMPAIGN ACT OF 1971, AS AMENDED ("FECA")	INTERNAL REVENUE CODE OF 1986, AS AMENDED ("I.R.C.")
WEBSITE ACTIVITIES		
	her opponents, who can then submit statements. In 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) The FEC stated that the following criteria determine whether an activity comes within the nonpartisan activity exception to the definition of expenditure: "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 election or defeat of	12 (a hyperlink from a tax-exempt 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). 5. (a) When a Section 501(c)(3) organization sponsors a chat room, and users of the chat room support or attack a candidate, does a violation of the prohibition against campaign intervention occur? Does the Section 501(c)(3) organization have an obligation to monitor the content of messages in the chat room, and revoke the privilege of users who support or oppose candidates? (b) A Section 501(c)(3) organization should explain the prohibition against campaign intervention in the instructions for use of the chat room, and require users to agree to comply with the prohibition. Before a user enters the chat room for the first time, the organization should require the user to provide his or her agreement by clicking a box or radio button labeled, "I agree to comply with the prohibition against campaign intervention as described in the foregoing instructions." 6. In IRS Fact Sheet 2006-17 (February 2006), the IRS provided 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

ACTIVITY	FEDERAL ELECTION CAMPAIGN ACT OF 1971, AS AMENDED ("FECA")	INTERNAL REVENUE CODE OF 1986, AS AMENDED ("I.R.C.")
WEBSITE ACTIVITIES		
	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, the FEC found that the acquisition did not require it to change 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. 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 No. 1999-24. This opinion extends the principles of FEC Advisory Opinion No. 1999-25 (see Paragraph 3) to for-profit companies. 5. (a) Meetup, Inc. ("Meetup") offers a commercial, Web-based platform for arranging local gatherings on more than 1,840 topics suggested by users. Meetup lists the suggested topics for the local gatherings on Meetup.com, and its Web-based software enables interested persons to register to meet up with others at a physical location to discuss the specified topic. Users typically "host" the "meetups" and bear all the costs associated with each event. Meetup does not supervise or arrange the events, other than to provide a platform for its users. There is no charge for Meetup's "basic services," which consist of listing a topic on Meetup.com and enabling a user to sign-up to attend a meetup. (b) Meetup derives its revenue from two sources: (i) from	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, 2007-25 I.R.B. (June 18, 2007), but in the first bracketed language the IRS did not refer to IRS Fact Sheet 2006-17, but to Rev. Rul. 78-248. 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 titled "More Information." These links include links to other hospitals that have treatment programs for this disease, research organizations seeking cures for that 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

ACTIVITY	FEDERAL ELECTION CAMPAIGN ACT OF 1971, AS AMENDED ("FECA")	INTERNAL REVENUE CODE OF 1986, AS AMENDED ("I.R.C.")
WEBSITE ACTIVITIES		
	establishments that pay to be listed as possible event venues; and (ii) from payment for premium services to individuals and organizations. For various levels of fees, Meetup permits entities to "sponsor" meetups on particular subjects. Meetup also lists several meetups at a given time in its "Featured Meetups" section. As a condition of sponsorship, each sponsored meetup is 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 permits sponsors to control the text in the section of the Meetup page where the description of a meetup is located (the "What" section). The sponsors are limited to twenty words and two hyperlinks in this space. Also for a fee, sponsors can control the text that appears in e-mails sent to members of the sponsored meetup. This text is limited to 500 characters and two links per e-mail, and each member receives three to five e-mails per month. Additionally, for a fee, sponsors can choose to set the top agenda item on their Meetup Web page (this is a suggested discussion topic for the actual meetup). Meetup also provides the sponsor with the names and other data of users who indicate that they will attend the sponsored meetup and grant Meetup permission to share their information. (c) Some of the Meetup topics include the names of candidates for federal office and federal political committees. A cursory review of Meetup's Website shows that the federal candidate topics comprise only a small percentage of the topic listings. Meetup does not favor or disadvantage political topics in relation to nonpolitical topics. Meetup's	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 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, 2007-25 I.R.B. (June 18, 2007). 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, 2007-25 I.R.B. (June 18, 2007).

ACTIVITY	FEDERAL ELECTION CAMPAIGN ACT OF 1971, AS AMENDED ("FECA")	INTERNAL REVENUE CODE OF 1986, AS AMENDED ("I.R.C.")
WEBSITE ACTIVITIES		
	communications department regularly posts "Featured Meetups" about interesting or timely topics, and Meetup will only feature candidate or political committee meetup events if that candidate or committee is a paid sponsor. (d) Meetup will charge different fees to different classes of sponsors. For example, all U.S. Senate candidates will be charged one set of fees while all candidates for the U.S. House of Representatives will pay a smaller fee for the same type of services. Meetup's overall fee structure is 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 tax Meetup's resources. Thus, Meetup will provide the same services for the same fees and on the same terms and conditions to all individuals or entities who are similarly situated in accordance with Meetup's fixed criteria, regardless of whether the entities are federal candidates, political committees, business, 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 are 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 does so in the ordinary course of business for the usual and normal charge. This charge must be set in	

ACTIVITY	FEDERAL ELECTION CAMPAIGN ACT OF 1971, AS AMENDED ("FECA")	INTERNAL REVENUE CODE OF 1986, AS AMENDED ("I.R.C.")
WEBSITE ACTIVITIES		
	accordance with the fixed set of criteria and must 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 are similarly situated with respect to the respective classes of candidates and political committees. Finally, federal candidates and political committees must pay for each premium service in a timely manner so that Meetup does 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. (g) The conclusion in (f) also applies to federal candidate and political committee meetups in the list of "Featured Meetups." Because federal candidates and political committee meetups will only be featured in accordance with the fixed sponsorship fee arrangement, meaning Meetup will never exercise its discretion in featuring a candidate or political committee meetup, no contribution or expenditure will result solely from Meetup's featuring of a sponsoring candidate's or political committee's meetup event. FEC Advisory Opinion No. 2004-6. 6. 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 No. 2000-16. 7. The Secretary of State of Minnesota could use its official Website to post hyperlinks to the Websites of all ballot qualified candidates for public office. FEC Advisory Opinion	

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

ACTIVITY	FEDERAL ELECTION CAMPAIGN ACT OF 1971, AS AMENDED ("FECA")	INTERNAL REVENUE CODE OF 1986, AS AMENDED ("I.R.C.")
WEBSITE ACTIVITIES		
	No. 1999-7. 8. See discussion of the Internet and federal election activity in Paragraph 1 of the FECA column for "Statutory and Regulatory Provisions on Contributions to and Fundraising for Section 501(c)(3) Organizations."	

A GUIDE TO ELECTION YEAR ACTIVITIES OF SECTION 501(c)(3) 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 corporation cannot compensate an employee while working on a campaign, other than compensation for bona fide earned vacation or leave. 11 C.F.R. §100.54(c); FEC Advisory Opinion No. 2000-1; FEC Advisory Opinion No. 1976-70. 2. When an employee takes unpaid leave to work on a campaign, a corporation cannot continue to pay for his or her benefits unless the corporation has a general policy to provide benefits for a brief period (i.e., thirty-one days) after termination of employment. The employee can pay for the benefits from personal funds. 11 C.F.R. §114.12(c)(1); FEC Advisory Opinion No. 1992-3; FEC Advisory Opinion No. 1976-70. A corporate PAC can pay the employer's share of the cost of benefits, and the payment is an in-kind contribution to the candidate. 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 purposes. 11 C.F.R. §114.12(c)(2). 4. An employee who is expected to work a specified number of hours per week can engage in political activity during working hours if the employee makes up the lost work time, or completes his or her work within a reasonable time. If the corporation compensates the employee on a commission or piecework basis, the employee's time is considered his or her own because the corporation compensates the employee only	1. Directors, officers, and employees of a Section 501(c)(3) organization can 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, 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

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		
	for work actually performed. 11 C.F.R. §100.54(a)-(b); see also FEC Advisory Opinion No. 2004-17 (candidate for House of Representatives can 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 under 11 C.F.R. §113.1(g)(6)). 5. A corporation cannot reimburse an employee through a bonus, expense account, and any other form of compensation for the employee's contributions. 11 C.F.R. §114.4(b)(1). 6. (a) In FEC Advisory Opinion No. 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 payment of a candidate's expenses that are "personal use" expenses under 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	(September 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 (February 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 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

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	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 approximately eleven years of full salary of six months to a year with the continuation of health insurance coverage for the same term. 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. (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,	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 potentially conflicts with Example 3 in IRS Publication 1828, Tax Guide for Churches and Religious Organizations (September 2006), discussed in Paragraph 7. See also T.A.M. 200446033 (November 2, 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's 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, 2007-25 I.R.B. (June 18, 2007), the IRS, in its discussion of individual activity by organization leaders, deleted the following language found in Fact Sheet 2006-17 (February 2006): "To avoid potential attribution of their comments outside of organization functions and 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." This language is also found in IRS Publication 1828, Tax Guide for Churches and Religious Organizations, at 7 (September 2006).

ACTIVITY	FEDERAL ELECTION CAMPAIGN ACT OF 1971, AS AMENDED ("FECA")	INTERNAL REVENUE CODE OF 1986, AS AMENDED ("I.R.C.")
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	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 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." Cf. FEC Advisory Opinion No. 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 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	(c) The officials 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 officials 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 No. 1984-12 (see Paragraph 7 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. 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. See also 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,

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	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 No. 2000-1 (paid leave of half salary while employee is a candidate granted solely in employer's discretion is a prohibited corporate contribution). 7. Directors of a Section 501(c)(3) organization can establish a PAC in their individual capacities and unconnected to the Section 501(c)(3) organization. FEC Advisory Opinion No. 1984-12. In this Advisory Opinion, members of the board of directors of the American College of Allergists, Inc., a Section 501(c)(3) 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	Libertarian National Committee Inc., and Natural Law Party of the United States, June 10, 2004 (available at http://www.irs.gov/newsroom/article0,,id=123922,00.html). 5. For individuals other than a Section 501(c)(3) organization's officials, such as employees and members, their actions are attributed to the organization when 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 (February 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 themselves as representing the organization, and officials made no effort to prevent the members' activities." 2002 CPE Text, at 365; see also PLR 200151060.

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	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 IRS position on this Advisory Opinion in Paragraph 4 of the I.R.C. column. 8. The FEC has found that when corporate executives use corporate stationery without reimbursing the corporation, the corporation makes an an impermissible contribution. MUR 3066, 1690, and 1261. 9. The FEC "does not see any basis for restricting individuals who work for entities barred from making electioneering communications from pooling their own funds to finance electioneering communications, provided no corporate or labor organization funds are used." Preamble to Final Rules on Electioneering Communications, 67 F.R. 65,190, 65,205 (October 23, 2002). 10. (a) When an individual or a group of individuals, 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 such Internet activities; (ii) the individual's use of equipment or	6. IRS Publication 1828, Tax Guide for Churches and Religious Organizations (September 2006), contains 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 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, and the endorsement is made by Minister A in a personal capacity, the ad does not constitute campaign intervention by Church J. Id. at 7. 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 (February 2006), and Rev. Rul. 2007-41, Situation 3, 2007-25 I.R.B. (June 18, 2007). 7. IRS Publication 1828, Tax Guide for Churches and Religious Organizations (September 2006), also contains the following example: Example 3: Minister C is the minister of Church L and is well

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	services for uncompensated Internet activities, regardless of who owns the equipment and services. (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. (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. (d) Paragraph (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. (e) This section does 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 and 100.155. 11. Members of the House of Representatives cannot serve for	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 C does not say he is speaking on behalf of his church. His endorsement is reported on the front page of the local newspaper and he is identified in the article as the minister of Church L. Since Minister C 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 L, his actions did not constitute campaign intervention attributable to Church L. Id. at 8. The IRS also used this example in IRS Fact Sheet 2006-17, Example 5 (February 2006), and Rev. Rul. 2007-41, Situation 5, 2007-25 I.R.B. (June 18, 2007). It is important to note that the IRS did not require the minister to issue 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 these examples potentially conflicts with the 2002 CPE Text, discussed in Paragraph 3. 8. The IRS in Fact Sheet 2006-17 (February 2006) provided the following examples of individual activity by organization leaders: 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,

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	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 if such service is performed without compensation. Senate Rule XXXVII §6(a)(1).	who have personally endorsed Candidate T, Candidate T publishes a full page ad in the local newspaper listing 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, 2007-25 I.R.B. (June 18, 2007). 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.

ACTIVITY	FEDERAL ELECTION CAMPAIGN ACT OF 1971, AS AMENDED ("FECA")	INTERNAL REVENUE CODE OF 1986, AS AMENDED ("I.R.C.")
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		2007-41, Situation 4, 2007-25 I.R.B. (June 18, 2007), and a similar example in IRS Publication 1828, Tax Guide for Churches and Religious Organizations, Example 2, at 7 (September 2006). 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, 2007-25 I.R.B. (June 18, 2007), and a similar example in IRS Publication 1828, Tax Guide for Churches and Religious Organizations, Example 4, at 8 (September 2006). 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 to the church? Similarly, when a church retains title to the automobile used by its minister for both church and personal purposes, can the minister affix a bumper sticker supporting or opposing a candidate?

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		10. Candidates and incumbents can serve on the governing boards of Section 501(c)(3) organizations.

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	1. Enforcement proceedings, known as "Matters Under Review," or "MURs," are initiated by the FEC, or another person by filing a signed complaint under oath. 2 U.S.C. §437g(a)(1); 11 C.F.R. §111.4. Within five (5) days after the FEC receives the complaint, it must notify in writing any person alleged to have violated FECA. That person has fifteen (15) 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. 2 U.S.C. §437g(a). (b) Generally speaking, 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 believe" a respondent has violated the Act. FEC, Notice 2007-6, Statement of Policy Regarding Commission Action in	1. (a) Code Section 4955 imposes a two-tiered excise tax on a Section 501(c)(3) organization. The initial tax is ten (10%) 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). (b) 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). (c) 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). (d) The taxable period is the period beginning with the date on which the political expenditure occurs, and ending 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). (e) 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

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	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. 2 U.S.C. 437(g)(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. 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	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). 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 political 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). 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 (2 1/2%) 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 (50%) 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

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	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. Id. (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 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	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). (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

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	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; • 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.	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 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 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

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	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. Id. 3. 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. The respondent can then file a reply brief within fifteen (15) days of receipt of the General Counsel's brief. 2 U.S.C. §437g(a)(3); 11 C.F.R. §111.16. If four of six voting commissioners vote a finding of probable cause, the parties can conduct settlement negotiations for not less than thirty (30) days, but no more than ninety (90) days. If the commissioners vote a finding of probable cause less than forty-five (45) days before an election, the parties can conduct settlement negotiations for not less than fifteen (15) days. If a conciliation agreement is reached, the FEC must make the agreement public. 2 U.S.C. §437g(a)(4)(B)(ii). A conciliation agreement, unless violated, is a complete bar to further civil action by the FEC. 2 U.S.C. §437g(a)(4)(A)(i). 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. 2 U.S.C.	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). 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. 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. When the Section 4955 excise tax is imposed on a political expenditure, the expenditure is not treated as an excess benefit for purposes of the Code Section 4958 intermediate sanctions imposed on public charities. I.R.C. §4955(e). 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),

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	§437g(a)(6)(A). 4. The civil penalty, whether resulting from a conciliation agreement or suit, cannot exceed the greater of $5,500, and an amount equal to the impermissible contribution or expenditure. 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 $11,000, and an amount equal to 200% of the impermissible contribution or expenditure. 2 U.S.C. §437g(a)(5)-(6); 11 C.F.R. §111.24(a)(1)-(2). The $5,500 and $11,000 amounts are subject to cost-of-living adjustments under the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. §2461 nt. The $5,500 amount has been increased to $6,500 for violations that occur after June 15, 2005. 70 F.R. 34,633, 34,635 (June 15, 2005). 5. (a) Any person who knowingly and willfully violates any provision of FECA that involves the making, receiving, or reporting of any contribution or 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. The one year cap is increased to two years for knowing and willful violations of the prohibition on contributions in the name of another. For contributions or expenditures aggregating $25,000 or more during a calendar year, the penalty is a fine of up to $250,000	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 I.R.C. §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. (1974), reprinted in 1974 U.S. Code Cong. & Admin. News 7478, 7507. The tax can apply to a Section 501(c)(3) organization's activities in support of or opposition to a nominee for appointive office. I.R.C. §527(e)(2). For the Section 501(c)(3) organization to avoid the tax, it must form a PAC to make the expenditures for these activities. I.R.C. §527(f)(3); 2003 CPE Text, at L-13 to L-14. 10. The IRS can revoke the Section 501(c)(3) organization's tax-exempt status, and with the exception of churches and their related organizations, the organization cannot be reclassified 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-

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	for individuals and $500,000 for entities, imprisonment for up to five (5) years, or both. 2 U.S.C. §437g(d)(l)(A); 18 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. 2 U.S.C. §437g(d)(l)(B). 6. (a) Knowing and willful violations of FECA were subject to the federal sentencing guidelines prior to the decisions of the United States Supreme Court in United States v. Booker, 125 S. Ct. 738 (2005), and United States v. Fanfan, 125 S. Ct. 738 (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 that provided in the guidelines. (b) The Guidelines of the United States Sentencing	exempt status. The IRS will seek 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, Final Regulations on Political Expenditures by Section 501(c)(3) Organizations, 60 F.R. 62,209 (December 5, 1995); 2002 CPE Text, at 353-54. See also T.A.M. 200437040 (September 10, 2004) (IRS should exercise its discretion to impose only the Section 4955 excise tax, and not revocation, when in two broadcasts during the presidential election campaign, the political intervention statements were only two brief paragraphs. No other political intervention statements during the three years in issue appear to have occurred. The organization has since adopted a policy to prevent recurrences of such statements). 12. A Section 501(c)(3) organization that loses its tax-exempt status likely will face suits by contributors, whose contributions are no longer deductible, for rescission and return of their contributions. Contributors who do not itemize deductions and therefore do not take a charitable contribution deduction may lack standing to bring these suits. 13. When the Section 4955 excise tax is imposed on a political expenditure, the expenditure is not treated as a taxable

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	Commission for FECA violations were contained in the United States Sentencing Guidelines Manual §§2C1.1-2C1.8 (November 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. (c) The amendments to the Sentencing Guidelines effective as of November 1, 2004 substantially tightened the requirements for an organization's Effective Compliance and Ethics Program, §8B2.1. One of the requirements was 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	expenditure for purposes of the Section 4945 excise tax on taxable expenditures of private foundations. I.R.C. §4955(e). The excise tax provisions of Section 4945 are similar to those of Section 4955.

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	criminal conduct." §8B2.1(b)(6). (d) If an offense occurred even though the organization had in place at the time of the offense an Effective Compliance and Ethics Program, the organization received a 3 point mitigating factor reduction in its Culpability Score. §8C2.5(f)(1)-(g). The organization did not receive the reduction (i) if, after becoming aware of an offense, the organization unreasonably delayed reporting the offense to appropriate governmental authorities; or (ii) except as provided in a rebuttable presumption, if an individual within high level personnel of the organization, or an individual within high level personnel of the unit of the organization within which the offense was committed if the unit had 200 or more employees, or specific individuals delegated day-to-day operational responsibility for the program, participated in, condoned, or were willfully ignorant of the offense. §8C2.5(f)(2)-(3)(A). There was a rebuttable presumption that an organization did not have an Effective Compliance and Ethics Program if (iii) an individual within high-level personnel of a small organization, or (iv) an individual within substantial authority personnel, but not within high-level personnel, of any organization, participated in, condoned, or was willfully ignorant of, the offense. §8C2.5(f)(3)(B). (e) In the Principles of Federal Prosecution of Business Entities issued on December 12, 2006, otherwise known as the McNulty Memorandum, the Department of Justice	

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	provided the following guidelines on compliance programs: While the Department recognizes that no compliance program can ever prevent all criminal activity by a corporation's employees, the critical factors in evaluating any program are whether the program is adequately designed for maximum effectiveness in preventing and detecting wrongdoing by employees and whether corporate management is enforcing the program or is tacitly encouraging or pressuring employees to engage in misconduct to achieve business objectives. The Department has no formal guidelines for corporate compliance programs. The fundamental questions any prosecutor should ask are: 'Is the corporation's compliance program well designed?' and 'Does the corporation's compliance program work?' In answering these questions, the prosecutor should consider the comprehensiveness of the compliance program; the extent and pervasiveness of the criminal conduct; the number and level of the corporate employees involved; the seriousness, duration, and frequency of the misconduct; and any remedial actions taken by the corporation, including restitution, disciplinary action, and revisions to corporate compliance programs. Prosecutors should also consider the promptness of any disclosure of wrongdoing to the government and the corporation's cooperation in the government's investigation. In evaluating compliance programs, prosecutors may consider whether the corporation has established corporate governance mechanisms that can effectively detect and prevent	

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	misconduct. For example, do the corporation's directors exercise independent review over proposed corporate actions rather than unquestioningly ratifying officers' recommendations; are the directors provided with information sufficient to enable the exercise of independent judgment, are internal audit functions conducted at a level sufficient to ensure their independence and accuracy and have the directors established an information and reporting system in the organization reasonably designed to provide management and the board of directors with timely and accurate information sufficient to allow them to reach an informed decision regarding the organization's compliance with the law. *In re: Caremark*, 698 A.2d 959 (Del. Ct. Chan. 1996)") (footnote omitted). Paul J. McNulty, Deputy Attorney General, U.S. Department of Justice, "Principles of Federal Prosecution of Business Organizations," December 12, 2006, at 14 (available at www.usdoj.gov/dag/speech/2006/mcnulty_memo.pdf) (the "McNulty Memorandum"). 7. Good faith reliance on an FEC advisory opinion is a complete defense to any sanction for 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. 2 U.S.C. §437f(c). 8. A conciliation agreement entered into by a defendant with the	

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	FEC may be introduced as evidence of the defendant's lack of knowledge or intent to commit an offense. 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. 2 U.S.C. §437g(d)(3). 9. (a) A corporation can indemnify its PAC's officers and employees for fines, judgments, and settlements resulting from PAC activities. The indemnification is treated as a permissible payment of PAC administrative expenses, and not an impermissible contribution or expenditure. 11 C.F.R. §114.5(b); FEC Advisory Opinion No. 1991-35; FEC Advisory Opinion No. 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 or expenditure. FEC Advisory Opinion No. 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 I.R.C. §527(f) tax on exempt function expenditures). (b) If a nonprofit corporation agrees to indemnify its PAC's	

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	officers and employees, whether by employment agreement, general policy applicable to all employees or a specified group of employees, or by-laws, it must determine whether the indemnification is void as against public policy under the applicable state nonprofit statute. (c) In the well-known 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 Attorney General, U.S. Department of Justice, "Principles of Federal Prosecution of Business Organizations," January 20, 2003, at 5 ("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 attorneys 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	

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	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.usdoj.gov/dag/cftf/corporate_guidelines.htm); Norwood P. Beveridge, "Does the Corporate Director Have a Duty Always to Obey the Law?," 45 DePaul Law Review 729 (1998); Laurie P. Cohen, "Prosecutors' Tough New Tactics Turn Firms Against Employees," The Wall Street Journal, June 4, 2004, at A1, A8 ("In January 2003, the Justice Department sought to codify 'cooperation' in white-collar prosecutions. A memorandum, titled 'Federal Prosecution of Business Organizations,' advised U.S. Attorneys to 'scrutinize the authenticity of a corporation's cooperation' when considering whether to seek criminal charges. It is known as the 'Thompson memo,' for former Deputy Attorney General Larry D. Thompson. It goes beyond a 1999 memo that advised prosecutors to consider companies' willingness to waive attorney attorney-client privilege and 'identify the culprits within the corporation.' The Thompson memo says prosecutors can also take into account a company's willingness to advance legal fees to employees as a sign of their lack of cooperation. The Justice Department's concern is that employees who are getting their legal costs paid are likely to toe the company line, and not so likely to come forward with evidence against the company. The Securities and Exchange Commission also has come	

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	down against corporate payment of employee legal costs. Such indemnification by Lucent Technologies Inc. increased the size of the penalty–$25 million–that Lucent recently had to pay to settle SEC civil charges of improperly booking revenue. . . . If KPMG were a company incorporated in Delaware and some other states, prosecutors couldn't have expected it to put conditions on paying staff members' legal costs. The states require the corporations to do so, even before any indictment. But KPMG isn't incorporated. It's a partnership. So the restriction doesn't apply"); Paul Davies & David Reilly, "In KPMG Case, the Thorny Issue of Legal Fees," The Wall Street Journal, June 12, 2007, at C5 ("Pressed by the government, Dynegy cut off Mr. Olis's legal fees after he was indicted in 2003 on charges that he helped engineer a sham financial transaction at the Houston energy company. Mr. Olis, who sold his house as a result of his legal troubles, says he was outgunned by the federal government's legal team, which he believes led to his conviction. Late last month, a jury in a civil court in Texas ruled that Dynegy improperly cut off his defense costs in a bid to avoid a criminal indictment of the energy company. The jury ordered Dynegy to pay Mr. Olis's attorney, who brought the case, $2.5 million in damages. The company plans to appeal. For Mr. Olis, 41 years old, the decision was a hollow victory. A former midlevel accountant at Dynegy, Mr. Olis was convicted in November 2003 on fraud and conspiracy charges for helping arrange a $300 million loan	

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	disguised to look like normal corporate cash flows. Mr. Olis's original sentence of 24 years was overturned on appeal, with help from a high-powered legal team. His lawyer won't say who paid for the appeal, but one expert witness said he testified at no charge. Mr. Olis remains in prison"); Lois F. Herzeca, "Key Issues for Director and Officer Indemnification," New York Law Journal, August 23, 2004, at 4, 6 ("[S]ome U.S. attorneys conducting investigations are requiring, as a condition of corporate 'cooperation,' that companies cease advancing expenses to employees who are not 'cooperating' because they are asserting their Fifth Amendment rights. It may be in a company's interest to cooperate in order to receive more favorable treatment. Companies without flexible advancement provisions may have to choose between 'cooperating' and violating an employee's contractual right to advancement, or not 'cooperating' and receiving a more onerous sentence. A company also should have flexibility to impose conditions on advances under circumstances where its D&O insurer would not reimburse the advance or there is a credit risk. For example, in a situation where an officer pleads guilty, but there has not yet been a final disposition of the matter, the company may be obligated to advance expenses under its contractual arrangements but the D&O insurer may have a broad exclusion for fraud or dishonesty 'in fact,' on which basis it can refuse coverage. . . . Finally, indemnification and advancement provisions should work	

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	together with a company's D&O insurance program so any gaps in coverage are minimized. For example, if under a company's contractual obligations advancement is required until final disposition of a matter, the company should endeavor to obtain 'final adjudication' clauses in its D&O coverage so that coverage cannot be denied on the basis of fraud or dishonesty 'in fact'"). (d) The court in United States v. Stein, 435 F. Supp. 2d 330, 364, 366 (S.D.N.Y. 2006), held that the Thompson Memorandum violated a defendant's Fifth Amendment due process rights and Sixth Amendment right to counsel. ("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	

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	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 Sixth Amendment") (footnotes omitted). (e) 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, ___ F.3d ___, 2007 WL 1487822, at *7 (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: Third, even 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	

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	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 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, June 5, 2007, at 3, 6. (f) The Department of Justice issued new Principles of Federal Prosecution of Business Entities in the McNulty Memorandum on December 12, 2006, which contain the following guidelines on corporate indemnification of employees' attorney's fees: Prosecutors generally should not take into account whether a corporation is advancing attorneys' fees to employees or agents under investigation and indictment. Many state	

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	indemnification statutes grant corporations the power to advance the legal fees of officers under investigation prior to a formal determination of guilt. As a consequence, many corporations enter into contractual obligations to advance attorneys' fees through provisions contained in their corporate charters, bylaws or employment agreements. Therefore, a corporation's compliance with governing state law and its contractual obligations cannot be considered a failure to cooperate.[3] This prohibition is not meant to prevent a prosecutor from asking questions about an attorney's representation of a corporation or its employees.[4] [3] In extremely rare cases, the advancement of attorneys' fees may be taken into account when the totality of the circumstances show that it was intended to impede a criminal investigation. In these cases, fee advancement is considered with many other telling facts to make a determination that the corporation is acting improperly to shield itself and its culpable employees from government scrutiny. *See discussion in* Brief of Appellant-United States, *United States v. Smith and Watson,* No. 06-3999-cr (2d Cir. Nov. 6, 2006). Where these circumstances exist, approval must be obtained from the Deputy Attorney General before prosecutors may consider this factor in their charging decisions. Prosecutors should follow the authorization process established for waiver requests of Category II information (see section VII-2, *infra*).	

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

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	[4] Routine questions regarding the representation status of a corporation and its employees, including how and by whom attorneys' fees are paid, frequently arise in the course of an investigation. They may be necessary to assess other issues, such as conflict-of-interest. Such questions are appropriate and this guidance is not intended to prohibit such inquiry. Paul J. McNulty, Deputy Attorney General, U.S. Department of Justice, "Principles of Federal Prosecution of Business Organizations," December 12, 2006, at 11-12 (available at usdoj.gov/dag/speech/2006/mcnulty_memo.pdf). (g) It is unclear under the McNulty Memorandum that when neither state law nor corporate contracts provide for indemnification of employees for attorney's fees, whether the prosecutor is prohibited from considering a corporation's decision to pay an employee's attorney's fees in deciding whether to charge the corporation. See also Abbe D. Lowell, Christopher Man & Obiamaka P. Okwumabua, "Is the DOJ's New Policy on Prosecuting Corporations Real Reform or Business as Usual?," Large Law Firm Section of Law.com, January 31, 2007 ("The most significant problem with the McNulty Memorandum is that it speaks only to what the prosecutor can demand, but it does not place meaningful limit on what the prosecutor can suggest. As we all know, a prosecutor's request or suggestion of what companies might do to be deemed cooperative can be heard by a company as what it has to do. While the new policy may rein in the rogue	

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	or overzealous prosecutor by requiring approval by a senior DOJ official before demanding a privilege waiver or fee cutoff, the policy does nothing to restrain Assistant U.S. Attorneys from making these requests more subtly. The pressure on corporations to accede to a prosecutor's request to waive privilege or to make like difficult for suspected employees is still too great so long as the practical reality of failing to do what the government wants is corporate suicide. Without an actual ban of these tactics, prosecutors can wink and nod, and companies will feel that the best way to avoid indictment is to do that which the government used to demand directly. There will be no way for this now sub rosa pressure to be exposed. Exchanges between prosecutors and corporations will now say all the right words, and it will be harder for well-intentioned DOJ supervisors and judges to scrutinize the pressure on corporations that was once overt but is now implicit").	