

Permissible Political Activities of PACs and Non-Profit Organizations Under Federal Campaign Finance and Tax Laws

Prepared by Public Citizen's Congress Watch (February, 2004)

Campaign Activity	Federally Regulated PACs	Section 527 Groups	Non-Profits 501(c)(4)-(8)	Charities 501(c)(3)
<p>Express Advocacy Defined by FECA as political communications that use the "Magic Words," such as "vote for" or "vote against"</p>	<ul style="list-style-type: none"> ▪ Unlimited, but subject to FECA's contribution limits and reporting requirements. 	<ul style="list-style-type: none"> ▪ Prohibited for Section 527s, unless registered as limited¹ "independent expenditures" and subject to the disclosure requirements and limits of FECA. 	<ul style="list-style-type: none"> ▪ Prohibited for 501(c) non-profits, unless registered as limited¹ "independent expenditures" and subject to the disclosure requirements and limits of FECA. 	<ul style="list-style-type: none"> ▪ Prohibited.
<p>Electioneering Communications Defined by FECA as broadcast communications that depict a candidate with in 60 days of a general election, 30 days of a primary election</p>	<ul style="list-style-type: none"> ▪ Unlimited, but subject to FECA's contribution limits and reporting requirements. 	<ul style="list-style-type: none"> ▪ Prohibited for Section 527s, unless registered as limited¹ "electioneering communications" and subject to reporting requirements and limits of FECA. 	<ul style="list-style-type: none"> ▪ Prohibited for 501(c) non-profits, unless registered as limited¹ "electioneering communications" and subject to reporting requirements and limits of FECA. 	<ul style="list-style-type: none"> ▪ Prohibited.
<p>Electioneering Activity Defined broadly by the IRS as political activity designed to influence the selection of any individual to federal, state or local office, including issue advocacy, broadcast ads, polling, get-out-the-vote activities, and so forth. <i>Note:</i> Despite the broader definition of electioneering activity under the IRS Code, express advocacy and electioneering communications are still subject to FECA regulations.</p>	<ul style="list-style-type: none"> ▪ Unlimited, but subject to FECA's contribution limits and reporting requirements. 	<ul style="list-style-type: none"> ▪ Permitted, as the primary purpose of the organization is to accept contributions and make expenditures for electioneering activity. 	<ul style="list-style-type: none"> ▪ Permitted, but not as the "primary purpose" of the organization. ▪ Permissible electioneering activity must be relevant to the organization's "primary purpose" stated in its IRS registration and articles of incorporation.² Electioneering activity that addresses matters beyond the organization's policy objectives is not permitted, such as advertisements that discuss the full range of a candidate's viewpoints and bear no relation to the organization's principal objectives. 	<ul style="list-style-type: none"> ▪ Prohibited, except for non-partisan voter registration and educational activities, such as sponsoring a candidate debate and distributing unbiased voter records.

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<p>Contribution Limits to the Organization</p>	<ul style="list-style-type: none"> ▪ Subject to FECA limits: Individuals: \$5,000/year. PACs: \$5,000/year. Parties: \$5,000/year. Corporations/Unions: Prohibited. 	<ul style="list-style-type: none"> ▪ Unlimited from corporations, unions, and individuals. 	<ul style="list-style-type: none"> ▪ Unlimited from corporations, unions, and individuals. 	<ul style="list-style-type: none"> ▪ Unlimited from corporations, unions, and individuals.
<p>Disclosure Requirements</p>	<ul style="list-style-type: none"> ▪ Groups receiving contributions or making expenditures of \$1,000 or more to promote or attack federal candidates must register with the FEC as a PAC within 10 days. ▪ PACs must file with the FEC total and itemized contributions and expenditures on a quarterly basis in an election year, along with a pre-election and post-election reports. Biannual reports are required in non-election years. ▪ The reports must include itemized contributions and expenditures of \$200 or more, including the name, date, occupation/employer of contributors and the purpose and candidates affected by the expenditures. 	<ul style="list-style-type: none"> ▪ Groups receiving contributions or making expenditures of \$25,000 or more must register with the IRS within 24 hours after formation. ▪ 527s must file with the IRS total and itemized contributions and expenditures on a quarterly basis in an election year, along with additional pre-election and post-election reports. Biannual reports are required in non-election years. ▪ The reports must include itemized contributions of \$200 or more and expenditures of \$500 or more, including much of the same information as required of PACs except that candidates and campaigns targeted by the expenditures need not be disclosed. ▪ Information on the date of contributions and purpose of expenditures are required in the reports. 	<ul style="list-style-type: none"> ▪ File with the IRS annually a description of major programs, gross income and expenses, assets and liabilities, and total contributions received. ▪ Major donors of \$5,000 or more must also be reported to the IRS but are not publicly disclosed. ▪ Must indicate in the filings the total amount spent on lobbying and electioneering activities combined, which is public information. 	<ul style="list-style-type: none"> ▪ File with the IRS annually a description of major programs, gross income and expenses, assets and liabilities, and total contributions received. ▪ Major donors of \$5,000 or more must also be reported to the IRS but are not publicly disclosed. ▪ Charities that elect 501(h) status (“elected expenditures test”) must also account for direct and grass-roots lobbying expenditures. Non-electing charities must disclose amounts expended for general methods of lobbying. ▪ Financial activity on non-partisan analyses of legislation must also be filed with the IRS.

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<p>Disclosure Requirements <i>Continued...</i></p>	<ul style="list-style-type: none"> ▪ Reports must be filed electronically for PACs with financial activity of \$50,000 or more and made available to the public on the FEC Web site within 48 hours. ▪ The Database on the FEC Web site is searchable, sortable, and downloadable. 	<ul style="list-style-type: none"> ▪ Reports must be filed electronically for 527's with financial activity of \$50,000 or more and made available to the public on the IRS Web site within 48 hours (effective June 30, 2003). ▪ The Database on the IRS Web site must be searchable and downloadable (effective June 30, 2003). 	<ul style="list-style-type: none"> ▪ 990 filings must be made within 2½ months after the end of the organization's tax year, although 6-month extensions are routinely granted. ▪ Copies of the annual reports are made available to the public within 30 days after submitting a written request to the organization or the IRS based in Ogden, Utah; or immediately if the request is made in person at the headquarters of the organization. None of these filings are made available on the IRS Web site. 	<ul style="list-style-type: none"> ▪ 990 filings must be made within 2½ months after the end of the organization's tax year, although 6-month extensions are routinely granted. ▪ Copies of the annual reports are made available to the public within 30 days after submitting a written request to the organization or the IRS based in Ogden, Utah; or immediately if the request is made in person at the headquarters of the organization. None of these filings are made available on the IRS Web site, though they are available online at Guidestar.
<p>Role of Federal Officials/Parties</p>	<ul style="list-style-type: none"> ▪ Federal officeholders, candidates and national parties may only solicit FEC-regulated money within the contribution limits applicable to the PAC for any political purpose. 	<ul style="list-style-type: none"> ▪ Federal officeholders and candidates may not explicitly "ask for" soft money for federal election purposes, although FEC regulations permit officeholders to participate in soft money fundraising events. ▪ Federal officeholders and candidates may solicit up to \$20,000/year in soft money exclusively for GOTV purposes. ▪ National parties may not solicit soft money for Section 527 groups. 	<ul style="list-style-type: none"> ▪ Federal officeholders and candidates may solicit unlimited soft money for non-profit groups whose function is not primarily electioneering, whether or not the group conducts substantial electioneering activity. ▪ National parties may not solicit soft money for non-profit groups. 	<ul style="list-style-type: none"> ▪ No limit on soft money fundraising for non-profit groups whose function is not primarily electioneering. National parties may not solicit or spend soft money for any purpose. ▪ National parties may not solicit soft money for charities.

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Tax Exemption³	<ul style="list-style-type: none"> ▪ Contributions are tax exempt, but not deductible. 	<ul style="list-style-type: none"> ▪ Contributions are tax exempt, but not deductible. ▪ Contributions of \$10,000 or more are exempt from the hefty gift tax. ▪ Investment income is taxable at the highest corporate rate. ▪ Transfers of funds between 527s and PACs are tax exempt. ▪ Risks losing tax exempt status if electioneering funds and non-electioneering funds are co-mingled and unaccounted; or if electioneering activity extends into express advocacy or electioneering communications under FECA. 	<ul style="list-style-type: none"> ▪ Contributions are tax exempt, but not deductible. ▪ Contributions of \$10,000 or more are <i>not</i> exempt from the hefty gift tax. ▪ Investment income is tax exempt for organizations not involved in electioneering activity. ▪ For organizations involved in electioneering activity, it is subject to tax on the lesser amount of investment income or the amount expended on electioneering activity. ▪ Expenditures for electioneering activities are tax exempt. ▪ Risks losing tax exemption status by failing the surrounding facts-and-circumstances test—that is, based on a determination of the group’s activities, it is deemed that the organization’s communications are designed primarily to influence candidate elections rather than promote the organization’s objectives through lobbying. 	<ul style="list-style-type: none"> ▪ Contributions are tax exempt and deductible. ▪ Contributions of \$10,000 or more are exempt from the hefty gift tax. ▪ Investment income is tax exempt. ▪ Risks losing tax exemption status by either: (a) failing the 20% maximum expenditures test for lobbying activities if an elected charity; or (b) the facts-and-circumstances test of whether their lobbying activities are substantial relative to other activities if a non-elected charity.

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Lobbying Activity	<ul style="list-style-type: none"> ▪ No limit, but organized primarily as an electioneering PAC. 	<ul style="list-style-type: none"> ▪ No limit, but electioneering is the organization’s primary purpose. 	<ul style="list-style-type: none"> ▪ No limit. 	<ul style="list-style-type: none"> ▪ “No substantial part” of its activities may be for either “direct” lobbying (influence legislative bodies) or “grass-roots” lobbying (influence public opinion to affect legislation). ▪ “No substantial part” has ever been clearly defined, but the expenditures test is that lobbying activity should not exceed 5% of the charity’s revenues if the charity has not elected 501(h) status, or 20% of direct lobbying activity and 25% of indirect lobbying activity if the charity elected 501(h) status, up to a maximum of \$1 million. ▪ Lobbying activity does not include communications of non-partisan analyses, research or reports.

¹ Section 527s and 501(c) non-profits may not have as their “major purpose” independent expenditures or electioneering communications without assuming PAC status, fully subject to FECA.

² The primary purpose standard for a 501(c) can be very broadly stated in the organization’s registration documents and tax filings. In assessing whether an organization’s electioneering activities have exceeded permissible boundaries, the IRS would apply a facts-and-circumstances test. For example, if a 501(c)(5) labor union ran extensive political ads promoting candidates explicitly because they are affiliated with the Democratic party, the facts-and-circumstances in this case could warrant a decision that party affiliation is not a primary purpose of the labor union and thus the ads risk the union’s tax status.

³ Despite ambiguity, the facts-and-circumstances test for tax exemption status can be distinguished from the elected expenditure test [501(h) status] in two respects. First, the latter is based exclusively on expenditures of money, whereas the former looks at expenditures as well as other factors such as time and effort expended, including the time and effort of unpaid volunteers, and the relative place of the organization's lobbying activities in its larger agenda. Second, the elected expenditure test limits grass-roots lobbying to one-fourth of permissible lobbying, whereas the facts-and-circumstances test makes no distinction between direct and grass-roots lobbying.