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Multi-organization Structures for Advocacy: 501(c)(3)s, 501(c)(4)s, PACs, etc.

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Federal Election-Related Activity by Tax-Exempt Organizations

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	Contribution Issues		Types of Activities and Communications					
			Tax Law Issues		FECA Issues			
	Contribution Limits[1]	**Disclosure**: Donors publicly disclosed	**Nonpartisan Activities** nothing that suggests support for or opposition to candidate or party	**Partisan Activities** activities that might suggest support or opposition but that are not regulated by FECA	**Electioneering Communications**[2] broadcast ads featuring a federal candidate and run within 30 days of a primary or convention or 60 days of the general election	**Express Advocacy**[2] clearly identified candidate plus "magic words" ("vote for," "elect," "defeat," etc.)[3]	**Coordinated Communications**[4] request, suggestion, or inside information from candidate or party on message, timing, audience, etc.	**Contributions** cash or something else of value (e.g. staff, lists, discounts) provided to candidate or party
501(c)(3) Charities Key points • Contributions deductible • Foundation grants may fund	None	No	Yes	No	Yes (Warning: tax law prohibition on partisan activities controls)	No	No	No
501(c)(4)s Key points • Nonpartisan "social welfare" activity must be primary	None	Some	Yes	Yes[5]	Yes[5]	Yes[5]	No	No
Connected PACs Key points • Parent organization pays all overhead and fundraising	Max contribution $5000/yr No union or corporate contribs. May only solicit "restricted class" (senior staff, members)	Yes	No	Yes	Yes	Yes	Yes[6]	Yes[6]
Nonconnected (contribution) PAC Key points • Pays own overhead & FR	Max contribution $5000/yr No union or corporate contributions.	Yes	No	Yes	Yes	Yes	Yes[6]	Yes[6]
Indep. Expenditure PACs (aka "Super PACs") Key points • No contribs. to candidates • Pays own overhead & FR, but related org may contrib.	None (unlimited corporate and union contributions permitted)	Yes	No	Yes	Yes	Yes	No	No
"Soft" 527s Key points • Other options more relevant	None	Yes	No	Yes	Yes (if no express advocacy)	No	No	No

[1] Federal law prohibits any contribution from foreign nationals or government contractors for electoral activities.
[2] FEC disclaimer required, and FEC reporting (including certain donor disclosure) may be necessary.
[3] May also include communications that could only be seen as urging a vote for or against a particular candidate.
[4] Coordinated communications are typically treated as contributions to the coordinating candidate or party.
[5] Subject to requirement that "primary purpose" is nonpartisan "social welfare" activity.
[6] Subject to FECA contribution limits.

This chart is a summary of the law only and should not be used as a substitute for the advice of qualified counsel.

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Key Legal Principles Governing Election-Year Activities

This memo summarizes some of the key legal issues governing election-year activities by various types of tax-exempt organizations:

- Federal (and, to a lesser degree, state) election law in the wake of several important recent court decisions, notably the U.S. Supreme Court's ruling in *Citizens United vs. Federal Election Commission* ("FEC");

- Federal tax law limits, including not only the separate rules for 501(c)(3) and 501(c)(4) organizations, but also the need to keep the two organizations' activities separate to protect the 501(c)(3); and

- The different types of political organizations, including traditional federal political committees ("PACs") that can make contributions to federal candidates, "independent-expenditure-only" PACs (aka "Super PACs), and "soft" 527 organizations (which have become less relevant in the wake of recent rulings freeing independent-expenditure-only PACs from source and amount restrictions on the contributions they can receive).

Election Law after *Citizens United*

The rules governing corporate involvement in federal elections have changed significantly as a result of the recent ruling by the U.S. Supreme Court in the case *Citizens United v. FEC*,[1] as well as other recent decisions in the lower courts.[2] Although the news media has focused on the potential to increase political spending by for-profit corporations, these decisions also have expanded the range of permissible political activity for nonprofit corporations, including 501(c)(4) social welfare organizations, 501(c)(5) unions, 501(c)(6) trade associations, and even political organizations exempt from tax under section 527. However, these recent court decisions have still left intact many restrictions on corporations and unions under federal election law. (And, as described in more detail below, the rulings had no significant impact on the restrictions on electoral activity that federal tax law applies as a condition for tax-exempt status, such as the absolute ban on electioneering by 501(c)(3) organizations.)

Corporate Cash and In-Kind Contributions to Candidates Prohibited

Both before and after the *Citizens United* decision, corporations were and are prohibited under federal election law from making contributions (including in-kind contributions) to federal

[1] 558 U.S. 50 (2010).
[2] See, e.g., *SpeechNow.org v. FEC* (No. 08-5223, D.C. Cir., Mar. 26, 2010) and *EMILY's List v. FEC* (No. 08-5422, D.C. Cir., Sept. 18, 2009), discussed below.

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