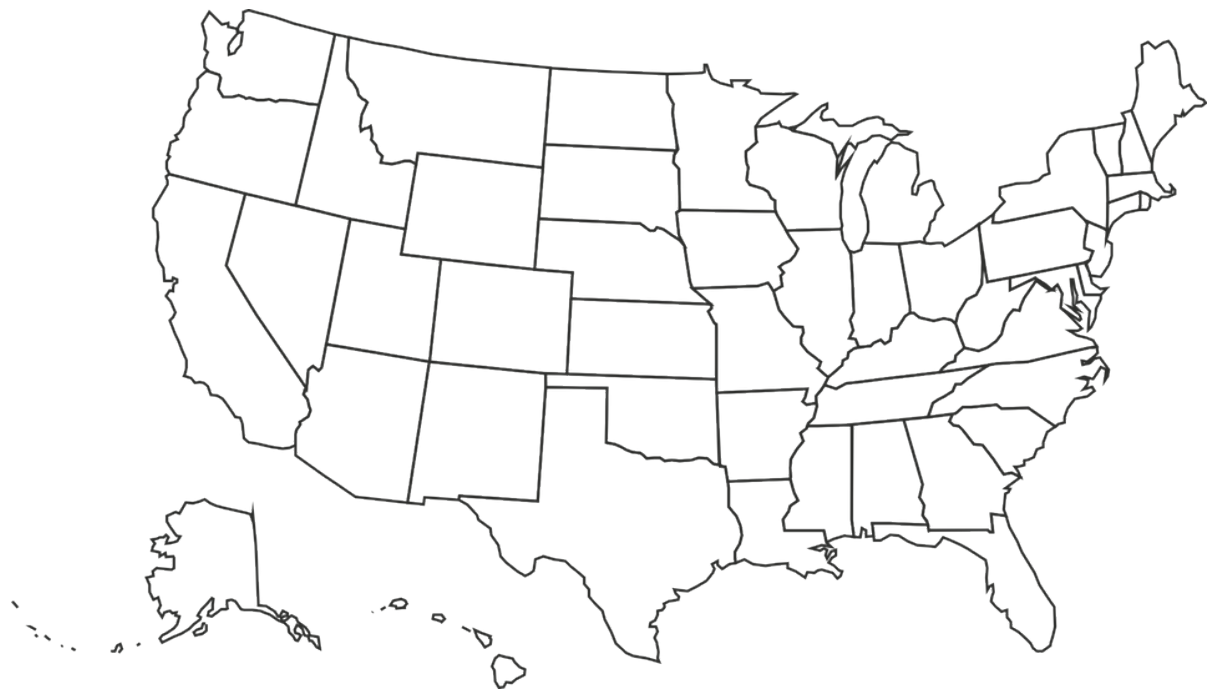




**INSTITUTE FOR
FREE SPEECH**

A Survey of Campaign Finance and Lobbying Laws in the 50 States, District of Columbia, New York City, and Seattle

By Eric Wang





Introduction

The laws in the United States regulating speech about government are enormously complex, especially for such a niche area of the law. As the Supreme Court has noted, the federal law regulating campaign speech (so-called “campaign finance” law) alone consists of “568 pages of regulations, 1,278 pages of explanations and justifications for those regulations, and 1,771 advisory opinions since 1975.”¹ This does not even include the nearly 100 pages of statute, and the separate body of law regulating speech about legislative and administrative matters (so-called “lobbying” law). Add to this the reality that each state and many municipalities have their own laws regulating speech pertaining to state and local candidates and government, and the complexity of this body of law explodes more than 50-fold.

The Institute for Free Speech (“IFS”) has reviewed the laws in all 50 states, the District of Columbia, New York City, and Seattle regulating speech about government to determine how much of a regulatory burden each jurisdiction imposes on this core First Amendment activity. The following analysis examines each state’s laws according to 12 major free speech and association issues (several of which are comprised of multiple sub-issues). This analysis is current with state law as of March 2018. Since states are continuously adding to and amending their statutes, it is likely that some of the statutes referenced in this analysis have changed.

The following analysis examines each state’s laws according to 12 major free speech and association issues.

Please note that this survey focuses on each state’s statutes and does not consider any potentially applicable regulations, agency advisory opinions, or court decisions that may have impacted the relevant statutes. This high-level treatment is deliberate. The average person or organization simply does not have the resources to analyze all of those other authorities, and “[t]he First Amendment does not permit laws that force speakers to retain a campaign finance attorney” to determine whether and how they may speak.² Rather, statutes regulating speech about government should speak for themselves; they should be clear on their face in “giv[ing] the person of ordinary intelligence a reasonable opportunity to know” how his or her speech will be regulated.³ If laws are affected by court rulings or regulatory action, government should revise the laws accordingly.

IFS hopes this document will help inform members of the public and state policymakers about complex and onerous laws burdening political speech.

IFS hopes this document will help inform members of the public and state policymakers about complex and onerous laws burdening political speech. By revealing information not only on how the states compare with each other, but also on how a given state regulates various issues pertaining to speech

about government, this document may provide a useful guide to public interest organizations and policymakers on how to focus their legislative and litigation efforts to implement true reform in our political speech laws.

¹ *Citizens United v. FEC*, 558 U.S. 310, 334 (2010). The number of advisory opinions has increased in the subsequent nine years.

² *Id.* at 324.

³ *Grayned v. City of Rockford*, 408 U.S. 104, 108 (1972).

For groups looking to speak about issues and campaigns in their state, this document can also serve as reference to each state's law for the speech they might be considering. Before anyone speaks on political issues, however, it is wise to consult an attorney to provide definitive guidance for any planned communications.

What follows are brief descriptions of the 12 major issues covered by this survey and explanations of their significance to freedom of speech.



Major Issues

1. False Political Speech Laws

The first issue reviews whether a state has a law purporting to regulate false speech about elected officials and candidates. Such laws chill and punish speech because they invite politically motivated complaints and place speakers at the mercy of government officials in determining whether speech concerning candidates and government is “true” or “false.”

These types of laws have been held unconstitutional in some states and are likely unconstitutional across the board. However, the Supreme Court has not issued a categorical ruling on their merits.⁴ Thus, to the extent these laws remain on the books in many states, they impose uncertainty and risk for speech about government and candidates.

2. “Expenditure”/“Express Advocacy” Definitions

The second issue covers how a state defines a campaign “expenditure” – a term of art under the campaign finance laws that triggers an array of regulatory burdens. At a minimum level, a communication that constitutes an “expenditure” typically will require a prescribed disclaimer. Making an “expenditure” also may require a public report to be filed (which in many cases may require public reporting of donors, including the exposure of individuals’ personal address and employment information). At the most invasive level, making “expenditures” also may require the speaker to register and file ongoing reports as a political committee (or “PAC”) and publicly report donors (if the speaker is an organization).

When expenditures are defined broadly, more speech is covered by the definition. When the regulatory burdens for making those expenditures are great, it is necessarily the case that individuals and groups are less likely to speak, and when they do, they are more likely to unknowingly run afoul of these statutes.

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Thus, how precisely a state defines an “expenditure” is crucial. The most precise standard that imposes the fewest burdens on campaign speech is known as the “*Buckley* express advocacy” standard, which is rooted in the Supreme Court’s landmark decision in *Buckley v. Valeo*.⁵ Only “communications containing express words of advocacy of election or defeat, such as ‘vote for,’ ‘elect,’ ‘support,’ ‘cast your ballot for,’ ‘Smith for Congress,’ ‘vote against,’ ‘defeat,’ [or] ‘reject,’” are regulated under this standard.⁶

IFS also considers the standard articulated in *FEC v. Massachusetts Citizens for Life* (“*MCFL*”)⁷ to fall within the *Buckley* standard. The *MCFL* standard essentially represents the principle of transitivity, under which certain candidates are identified with a label (such as “pro-life”), and then *Buckley* express advocacy language is applied to candidates with that label (e.g., “vote for ‘pro-life’ candidates”).

⁴ See *Susan B. Anthony List v. Driehaus*, 134 S. Ct. 2334 (2014), on remand, 45 F. Supp. 3d 765 (S.D. Ohio 2014), *aff’d* 814 F.3d 466 (6th Cir. 2016).

⁵ 424 U.S. 1, 44 n.52 (1976).

⁶ *Id.*

⁷ 479 U.S. 238 (1986).

A broader standard is known as the “functional equivalent of express advocacy” standard. Speech is regulated under this standard “only if [it] is susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate.”⁸ The problem with this standard is that regulators making the judgments are often unreasonable when they apply it, leaving a great deal of uncertainty for speakers.

An even broader “expenditure” definition is known as the *Furgatch* standard, which the U.S. Court of Appeals for the Ninth Circuit articulated in *FEC v. Furgatch*.⁹ The FEC purports to have implemented this standard in 11 C.F.R. § 100.22(b). Under this standard, speech is regulated if:

When taken as a whole and with limited reference to external events, such as the proximity to the election, could only be interpreted by a reasonable person as containing advocacy of the election or defeat of one or more clearly identified candidate(s) because –

- (1) The electoral portion of the communication is unmistakable, unambiguous, and suggestive of only one meaning; and
- (2) Reasonable minds could not differ as to whether it encourages actions to elect or defeat one or more clearly identified candidate(s) or encourages some other kind of action.

11 C.F.R. § 100.22(b).

Some states may apply a standard similar to the *Furgatch*/100.22(b) standard only during certain pre-election time windows, while other states may apply the standard year-round.

Other states’ “expenditure” definitions may be even broader than the *Furgatch* standard.

3. “Electioneering Communication” Laws

The third issue captured in this survey considers whether and how a state regulates “electioneering communications” (“ECs”). An EC is generally understood as a communication that refers to a candidate or elected official up for re-election that is made within certain pre-election time windows. EC laws generally deem such speech to be “electioneering,” even if the speech is an attempt to influence and call public attention to a policy or governmental issue.

Electioneering communications statutes are highly likely to capture and regulate genuine speech about issues of public importance, or what is more commonly known as issue advocacy. By regulating a broad swath of issue speech and imposing extensive burdens on such speech, EC laws sharply reduce the amount of First Amendment activity that groups are likely to engage in. Further, since the activity regulated by ECs is usually broader than a state’s expenditure definition, groups are more likely to accidentally violate EC statutes with their communications. Such instances reduce the likelihood of future speech.

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Unless covered by an exemption, unbiased and nonpartisan informational voter guides also may be

⁸ *Wisconsin Right to Life v. FEC*, 551 U.S. 449, 469-470 (2007).

⁹ 869 F.2d 1256 (9th Cir. 1989).



captured as ECs. Like the federal EC law, some states may limit the reach of such laws to some extent by applying them only to communications that target the relevant electorate, although oftentimes this merely coincides with elected officials' constituents.

Some states use the term "electioneering communication," but define it as the functional equivalent of express advocacy or something similar (see #2 above). Other states may not use the term "electioneering communication," but have laws that function as EC laws by regulating speech referencing candidates within certain pre-election time windows. Yet other states treat mere references to candidates within certain pre-election time windows the same as express advocacy expenditures.

Like the "expenditure" definition, speech deemed to be an EC may trigger burdensome disclaimer and reporting requirements, including donor information, that would-be speakers should be aware of.

4. Independent Expenditure Donor Reporting Requirements for Non-PAC Entities

The fourth issue surveys whether and how organizations that sponsor independent expenditures ("IEs") that are *not* political committees ("PACs") are required to report donors. IEs are generally understood as campaign expenditures (see #2 above) made by independent groups that are not coordinated with any candidates (including their campaign committees and other agents) or political party committees.

Reporting requirements, particularly donor identification requirements, dissuade groups from engaging in speech by increasing the threat of harassment to donors, creating regulatory headaches for would-be speakers, and making it harder to fundraise by infringing upon individuals' right to privacy in association.

Requirements to identify donors on IE reports pit the asserted governmental interest in knowing who is funding speech about government against donors' right to associational privacy.¹⁰ The Supreme Court also has held that "independent expenditures ... do not give rise to corruption or the appearance of corruption."¹¹ Thus, the justifications for sponsors of IEs to publicly report their donors are more attenuated than the requirement for PACs (discussed more below in #7 and 8) to report their donors. Nonetheless,

most states that require reporting of IEs require some level of donor reporting. IE reporting laws for non-PAC entities are generally not as burdensome as reporting requirements for PACs. However, some states do not distinguish between IE reporting and PAC reporting and treat sponsors of IEs as either full-fledged PACs or "incidental committees" (discussed more below in #9).

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¹⁰ See Eric Wang, "Staring at the Sun: An Inquiry into Compulsory Campaign Finance Donor Disclosure Laws," Cato Institute Policy Analysis No. 829. Available at: <https://www.cato.org/publications/policy-analysis/staring-sun-inquiry-compulsory-campaign-finance-donor-disclosure-laws> (December 14, 2017).

¹¹ *Citizens United*, 558 U.S. at 314.

5. Disclaimer Requirements for Independent Expenditures and Electioneering Communications

The fifth issue looks at the disclaimer requirements a state imposes on IEs and ECs. Disclaimers are viewed as a form of disclosure on the face of a regulated communication that complements the reporting requirements.¹² At a minimum, a disclaimer typically requires a statement identifying the name of the person or organization who is responsible for a regulated communication. Lengthier disclaimers may require contact information for the communication's sponsor, and a statement regarding whether the communication is authorized by a candidate. A few jurisdictions even require disclaimers to provide information about an organization's largest donors.

Such requirements may prescribe not only the content of disclaimers, but their form (e.g., audio, visual, size, color, placement, and length specifications). The lengthier and more complex and invasive a disclaimer requirement is,

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the more it burdens speech, the more likely a speaker is to inadvertently violate the law, and the more it cuts into the speaker's ability to present his or her own message. This is especially so in media that are subject to time or space restrictions. Disclaimers that require donor information also amplify all of the risks of general donor identification (see #4) by publicly broadcasting that information with every communication. This further dissuades speakers from engaging in political speech.

6. Statutory or Regulatory Authority for Super PACs

The sixth issue explores whether a state's statutes recognize super PACs. A "super PAC" is a PAC (discussed more below in #7 and 8) that does not make contributions to candidates or political party committees, but rather exists primarily to sponsor independent expenditures. Because super PACs only make independent expenditures (see #4 above), they are not subject to the typical amount limitations and source prohibitions on the contributions they may accept.

Relying on the Supreme Court's reasoning in *Citizens United*, a 2010 U.S. Court of Appeals for the D.C. Circuit decision¹³ and subsequent Federal Election Commission advisory opinions¹⁴ recognized super PACs at the federal level. Following the D.C. Circuit ruling, states have generally followed suit in recognizing super PACs, whether by advisory opinions, federal or state court rulings, or by legislative changes. Some states have essentially always allowed for super PACs, even prior to the advent of super PACs at the federal level, by allowing unlimited contributions from any source to a PAC.

Because legal recognition for super PACs is clearest when it is codified into statute, IFS reviewed each state's statutes for this issue. By not formally recognizing super PACs, states run the risk of limiting

¹² See, e.g., *McConnell v. FEC*, 540 U.S. 93, 231 (2003).

¹³ *SpeechNow.org v. FEC*, 599 F.3d 686 (D.C. Cir. 2010).

¹⁴ Adv. Op. Nos. 2010-09 (Club for Growth) and 2010-11 (Commonsense Ten).



First Amendment activity from groups that might want to become super PACs, particularly speakers with less expertise in campaign finance law.

7. Major/Primary Purpose for PAC Status

The seventh issue reviews whether a state regulates political committees (or “PACs”) based on “the major purpose” of an organization. Pursuant to U.S. Supreme Court decisions and decisions in other courts, a PAC is generally understood as an organization that accepts contributions and makes expenditures, and has “the major purpose” of nominating or electing candidates.¹⁵ As discussed above (see #4), this standard is important because it generally protects organizations that occasionally engage in political speech from the more extensive reporting burdens that apply to PACs.

When states expand the PAC status definition beyond the major purpose test, they necessarily capture a larger group of speakers and potential speakers.

Not all states and courts have followed the Supreme Court’s “major purpose” formulation¹⁶ (also known as “primary purpose” or “principal purpose” in some jurisdictions). Some jurisdictions allow a group to be regulated as a PAC if nominating or electing candidates is simply “a major purpose” of an organization – meaning that the electoral activity does not need to be more than

half of the group’s activities or spending, but merely some significant yet unspecified part. Other jurisdictions have imposed no meaningful limitation on their PAC definition, such that PAC status may be triggered merely by crossing some dollar threshold in spending on electoral activity.

When states expand the PAC status definition beyond the major purpose test, they necessarily capture a larger group of speakers and potential speakers. When more speakers are regulated, the burdens of speech become higher and groups are less likely to exercise their First Amendment rights (see #4).

8. PAC Status Determination and Thresholds

Related to #7 above, the eighth issue explores how PAC status is triggered in each state. Generally, PAC status is triggered by accepting “contributions” and/or making “contributions” and/or “expenditures,” as those terms are defined in each state. However, some states may have a broader or vaguer standard for what triggers PAC status. If a state’s “major purpose” standard (see #7 above) is thought of as consisting of a numerator (the electoral activities potentially triggering PAC status) and a denominator (the group’s activities as a whole), these triggers also will generally factor into the “numerator” of the major purpose analysis.

In addition, this section looks at the dollar threshold for the regulated activities that trigger PAC status, as well as the threshold at which a donor to a PAC must be publicly reported, and whether a donor’s employer information also must be reported.

All of these regulatory burdens hamper and chill speech and impair donors’ right to associational privacy by increasing the cost of speaking (in terms of time, money, and risk).

¹⁵ See *FEC v. Massachusetts Citizens for Life, Inc.*, 479 U.S. 238, 252-53 (1986); *Buckley*, 424 U.S. at 79; see also, e.g., *Free Speech v. FEC*, 720 F.3d 788, 797 (10th Cir. 2013).

¹⁶ See *Corsi v. Ohio Elections Comm’n*, 984 N.E.2d 29 (Ohio 2013), *cert denied* 134 S. Ct. 163 (2013).

9. Regulation of “Incidental Committees”

The ninth issue evaluates whether a state explicitly regulates “incidental committees” (which may be known by other terminology in some states) separately from the state’s “major purpose” standard in its PAC definition (see #7 above). Definitions of “incidental committee” and like terms vary dramatically from state to state, but generally capture groups whose activities only tangentially relate to campaign activity. Like the PAC laws, “incidental committee” statutes generally impose burdensome registration and/or reporting requirements on organizations that only occasionally engage in speech about government.

10. Private Enforcement Actions

The tenth issue assesses whether a state outsources to private citizens the enforcement of its laws regulating speech about government. State regulatory and enforcement agencies are far from ardent defenders of free speech. However, in practice, states with private enforcement actions fare even worse when it comes to burdens on speech. Private complainants often file politically motivated actions, or due to the complexity of the laws, actions based on misunderstandings of the law. Such actions frequently also fail to distinguish between significant and trivial violations and impose great costs on the speakers who have to defend against them.¹⁷

The net result of these private enforcement actions is to limit speech and association by increasing the risk of a private party filing a complaint against a speaker. Such complaints consume an individual’s or organization’s resources and often put speakers at the mercy of unaccountable private parties.

11. Coordination

The eleventh issue surveys how a state determines when speech by private persons and organizations is coordinated with an elected official or candidate. Under the campaign finance laws, coordinated speech is regulated as an in-kind campaign contribution to an elected official or candidate and, where applicable, subject to spending limits and source prohibitions.

While the purpose of coordination laws is generally to maintain independence between campaigns and independent groups, these statutes far more often enable First Amendment restrictions.

Overly broad coordination laws go beyond regulating activities that directly and unmistakably advocate for a candidate’s election. Instead, they prevent advocacy and civic groups from discussing positive and negative developments in government or policy proposals with elected officials and candidates and then

acting to raise the public’s awareness of such developments or ideas. The wide dissemination of information about governmental functions and issues of public concern is essential to representative government. Precise and narrowly tailored coordination laws protect organizations’ ability to inform the public of what their government is doing or should be doing.

While the purpose of coordination laws is generally to maintain independence between campaigns and independent groups, these statutes far more often enable First Amendment restrictions.

¹⁷ See, e.g., *Holland v. Williams*, No. 16-cv-00138-RM-MLC, 2018 U.S. Dist. LEXIS 98946, at *22-23 (D. Colo. June 12, 2018).



12. Lobbying

The last issue in this survey covers how a state regulates “lobbying,” with an emphasis on so-called “grassroots lobbying.” The right to petition the government is enshrined in the First Amendment, but government officials have recharacterized and regulated such speech as “lobbying.” Lobbying laws require individuals and organizations engaged in petitioning the government to register and file reports of their activities. Like the campaign finance laws, some states’ lobbying laws also require organizations to publicly report their donors.

By creating extensive and often arbitrary obstacles to engaging with lawmakers, overly burdensome lobbying laws inhibit citizens and civic and advocacy groups from exercising their right to petition the government and encouraging their fellow citizens to do the same.

In addition, many states go beyond regulating direct contacts made by individuals and organizations with government officials. “Grassroots lobbying” laws regulate exhortations for members of the public to contact officials about government and policy.

By creating extensive and often arbitrary obstacles to engaging with lawmakers, overly burdensome lobbying laws inhibit citizens and civic and advocacy groups from exercising their right to petition the government and encouraging their fellow citizens to do the same.

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ALABAMA

I. FALSE POLITICAL SPEECH LAW

Alabama does not appear to have a false political speech law.

II. DEFINITION OF EXPENDITURE/EXPRESS ADVOCACY

An “expenditure” is defined, in relevant part, as any payment “*for the purpose of influencing* the result of an election.” Ala. Code § 17-5-2(7) (emphasis added).

(Alabama’s campaign finance law does not define “express advocacy” or “independent expenditure.”)

III. ELECTIONEERING COMMUNICATIONS

(a) Regulation of ECs. Alabama regulates electioneering communications.

“Electioneering communication” means:

Any communication disseminated through any federally regulated broadcast media, any mailing, or other distribution, electronic communication, phone bank, or publication which (i) contains the name or image of a candidate; (ii) is made within 120 days of an election in which the candidate will appear on the ballot; (iii) the only reasonable conclusion to be drawn from the presentation and content of the communication is that it is intended to influence the outcome of an election; and (iv) entails an expenditure in excess of one thousand dollars (\$1,000).

Ala. Code § 17-5-2(6).

(b) What Content Triggers Regulation as an Electioneering Communication. A communication is regulated if it (1) “contains the name or image of a candidate” and (2) “the only reasonable conclusion to be drawn from the presentation and content of the communication is that it is intended to influence the outcome of an election.” *Id.*

(c) Types of Media Covered. The definition of “electioneering communication” covers “[a]ny communication disseminated through any federally regulated broadcast media, any mailing, or other distribution, electronic communication, phone bank, or publication.” *Id.*

(d) Reporting Threshold. Only communications that cost more than \$1,000 are considered electioneering communications. *Id.* This is also the threshold for reporting. *See id.* § 17-5-8(h).

(e) Time Windows. The time window for electioneering communications is within 120 days before an election in which the candidate will appear on the ballot. *Id.* § 17-5-2(6).

(f) Jurisdictional Limitation. There is no jurisdictional limitation on the definition of an EC. *See id.*

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(g) Donor Disclosure. General donor disclosure appears to be required on EC reports, although an argument could be made that only donors of earmarked funds are required to be reported.

Any person or entity who pays for an EC must identify “*each person who has made contributions*” to such committee or candidate within the calendar year in an aggregate amount greater than one hundred dollars (\$100), together with the amount and date of all such contributions.” Ala. Code § 17-5-8(h) and (c)(2) (emphasis added).

Arguably, only donors who provide funds “for the purpose of influencing the result of an election” should be required to be disclosed, *see id.* § 17-5-2(3)(a) (defining “contribution”), but it is unclear whether donor disclosure on EC reports is, in fact, subject to this limitation.

There does not appear to be any provision under which donors may avoid disclosure if they prohibit their donations from being used to fund ECs, or whereby disclosure may be limited to donors to a segregated account that is used to fund ECs.

(h) 501(c)(3) Exemption. There does not appear to be a specific 501(c)(3) exemption for sponsors of electioneering communications. However, “churches are exempt from the [reporting] requirements [for ECs]. . . unless the church’s expenditures are used to influence the outcome of an election.” Ala. Code § 17-5-8(i).

(i) Media Exemption. Alabama’s definition of EC does not appear to contain a media exemption. *See id.* § 17-5-2(6).

(j) Other Exemptions. An EC “used by any membership or trade organization to communicate with or inform its members, its members’ families, or its members’ employees or for any electioneering communication by a business entity of any type to its employees or stockholders or their families” is exempt from the reporting requirement. *Id.* 17-5-8(j).

IV. DONOR DISCLOSURE FOR INDEPENDENT EXPENDITURES MADE BY ENTITIES THAT ARE NOT PACS

It is not entirely clear what IE reporting requirements apply in Alabama. Any organization that makes IEs totaling more than \$1,000 during a calendar year may be required to register and report as a PAC. *See id.* §§ 17-5-2(a)(13) (PAC definition) and 17-5-5(a) (PAC registration requirement). On the other hand, IFS is aware that a federal court has applied a “major purpose” test to Alabama’s PAC requirements in the context of ballot measure advocacy. *See Richey v. Tyson*, 120 F. Supp. 2d 1298 (S.D. Ala. 2000). However, this ruling arguably is not binding on Alabama state courts.

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If sponsors of IEs are required to report as PACs:

(a) Donor Disclosure. General donor disclosure appears to be required on IE/PAC reports, although an argument could be made that only donors of earmarked funds are required to be reported.

A PAC must identify “*each person who has made contributions* to such committee or candidate within the calendar year in an aggregate amount greater than one hundred dollars (\$100), together with the amount and date of all such contributions.” Ala. Code § 17-5-8(c)(2) (emphasis added).

Arguably, only donors who provide funds “for the purpose of influencing the result of an election” should be required to be disclosed, *see id.* § 17-5-2(3)(a) (defining “contribution”), but it is unclear whether donor disclosure on IE/PAC reports is, in fact, subject to this limitation.

There does not appear to be any provision under which donors may avoid disclosure if they prohibit their donations from being used to fund IEs, or whereby disclosure may be limited to donors to a segregated account that is used to fund IEs.

(b) Threshold for Donor Disclosure. Disclosure is required for donors who have given a total of more than \$100 during the calendar year. *Id.* § 17-5-8(c)(2).

V. DISCLAIMER REQUIREMENTS FOR INDEPENDENT EXPENDITURES AND ELECTIONEERING COMMUNICATIONS

(a) Form of Disclaimer. There are no particular form requirements for disclaimers. Ala. Code § 17-5-12(a).

(b) Content of Disclaimer. “Any paid political advertisement or electioneering communication appearing in any print media or broadcast on any electronic media shall clearly and distinctly identify the entity responsible for paying for the advertisement or electioneering communication.” Ala. Code § 17-5-12(a).

Printed matter requires a notice containing “a clear and unmistakable *identification* of the entity responsible for directly paying for the advertisement or electioneering communication.” *Id.* (emphasis added). Broadcast communications require a notice “stating that the communication was a paid advertisement, clearly identifying the entity directly responsible for paying for the advertisement or electioneering communication, and giving the *identification* of the person, nonprofit corporation, entity, principal campaign committee, or other political action committee or entity that paid for such communication.” *Id.* (emphasis added).

Any card, pamphlet, circular, poster, or other printed material relating to or concerning any election must contain the *identification* of the person, candidate, or committee responsible for the publication, distribution, or display of the material. *Id.* § 17-5-13 (emphasis added).

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“Identification” is defined as the “full name and complete address” of the person paying for the communication. *Id.* § 17-5-2(8).

(c) Types of Media Covered. Unless an exception applies (see section (d), below), the disclaimer requirements apply to all paid political advertisements and electioneering communications. *Id.* § 17-5-12(a).

(d) Exceptions. Disclaimer requirements do not apply to political advertisements or electioneering communications if the communication is:

- (1) Designed to be worn by a person.
- (2) Placed as a paid link on an Internet website, provided the message or advertisement is no more than 200 characters in length and the link directs the user to another Internet website that complies with subsection (a).
- (3) Placed as a graphic or picture link where compliance with the requirements of this section is not reasonably practical due to the size of the graphic or picture link and the link directs the user to another Internet website that complies with subsection (a).
- (4) Placed at no cost on an Internet website for which there is no cost to post content for public users.
- (5) Placed or distributed on an unpaid profile account which is available to the public without charge or on a social networking Internet website, as long as the source of the message or advertisement is patently clear from the content or format of the message or advertisement. A candidate or political committee may prominently display a statement indicating that the website or account is an official website or account of the candidate or political committee and is approved by the candidate or political committee. A website or account may not be marked as official without prior approval by the candidate or political committee.
- (6) Distributed as a text message or other message via Short Message Service, provided the message is no more than 200 characters in length or requires the recipient to sign up or opt in to receive it.
- (7) Connected with or included in any software application or accompanying function, provided that the user signs up, opts in, downloads, or otherwise accesses the application from or through a website that complies with subsection (a).
- (8) Sent by a third-party user from or through a campaign or committee’s website, provided the website complies with subsection (a).
- (9) Contained in or distributed through any other technology related item, service, or device for which compliance with subsection (a) is not reasonably practical due to the size or nature of such item, service, or device as available, or the means of displaying the message or advertisement makes compliance with subsection (a) impracticable.

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Id. § 17-5-12(b).

VI. STATUTORY OR REGULATORY AUTHORITY FOR SUPER PACS

Alabama's statute does not specifically provide for super PACs. However, Alabama law generally does not impose limits or source prohibitions on contributions to PACs. *See id.* § 17-5-14(a).

VII. MAJOR/PRIMARY PURPOSE FOR PAC STATUS

Alabama's definition of a "political committee" does not have a "major purpose" or "primary purpose" requirement. *See Ala. Code* § 17-5-2(a)(13).

(IFS is aware that a federal court has applied a "major purpose" test to Alabama's political committee requirements. *See Richey v. Tyson*, 120 F. Supp. 2d 1298 (S.D. Ala. 2000). However, this decision arguably is not binding on state courts.)

VIII. PAC STATUS DETERMINATION AND THRESHOLDS

(a) PAC Definition. A "political committee" is defined in terms of receiving "contributions" and making "expenditures." *Ala. Code* § 17-5-2(13).

(As discussed above in Section II, Alabama's "expenditure" definition is very vague and broad.)

(b) Threshold for PAC Registration/Reporting. A PAC that anticipates either receiving contributions or making expenditures during the calendar year in an aggregate amount exceeding \$1,000 is required to register and report. *Ala. Code* § 17-5-5(a).

This threshold is not adjusted for inflation. *See id.*

(c) Threshold for Disclosure of PAC Donors. A PAC must identify "each person who has made contributions to such committee . . . within the calendar year in an aggregate amount greater than one hundred dollars (\$100)." *Ala. Code* § 17-5-8(c)(2).

(d) Disclosure of Donors' Employer Information on PAC Reports. Disclosure of PAC donors' employer information is not required. *See id.*

IX. REGULATION OF "INCIDENTAL COMMITTEES"

Alabama does not appear to regulate "incidental committees."

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X. PRIVATE ENFORCEMENT ACTIONS

Alabama does not provide for private enforcement actions. State law provides for enforcement by the Attorney General, district attorneys, the State Ethics Commission, Secretary of State, and judges of probate.¹ *See* Ala. Code §§ 17-5-19, -19.1, -19-2.

XI. COORDINATION

Alabama's campaign finance law does not address coordination.

XII. LOBBYING

(a) General Lobbyist/Lobbyist Principal Donor Disclosure. Alabama does not require donor disclosure for lobbyists or lobbyist principals. *See* Ala. Code §§ 36-25-18, 36-25-19.

(b) Grassroots Lobbying. Alabama does not regulate grassroots lobbying.

"Lobbying" means "[t]he practice of promoting, opposing, or in any manner influencing or attempting to influence the introduction, defeat, or enactment of legislation *before any legislative body*; opposing or in any manner influencing the executive approval, veto, or amendment of legislation; or the practice of promoting, opposing, or in any manner influencing or attempting to influence the enactment, promulgation, modification, or deletion of regulations before any regulatory body. The term does not include providing public testimony before a legislative body or regulatory body or any committee thereof." Ala. Code § 36-25-1(20) (emphasis added).

(IFS has confirmed this interpretation that grassroots lobbying is not regulated with the Alabama Ethics Commission.)

(c) Forms of Grassroots Lobbying Communications Regulated. N/A

(d) Grassroots Lobbying Reference to Specific Legislation. N/A

(e) Grassroots Lobbying Registration and Reporting Thresholds. N/A

(f) Donor Disclosure for Grassroots Lobbying. N/A

(g) Earmarked Donor Disclosure for Grassroots Lobbying. N/A

(h) Donor Disclosure Threshold for Grassroots Lobbying (If Not Limited to Earmarked Donors). N/A

(i) Threshold Indexing (If Grassroots Lobbying Is Regulated). N/A

¹ Local "judges of probate" are the filing officers for local campaign finance reports. *See id.* § 17-5-9.

ALASKA

I. FALSE POLITICAL SPEECH LAW

Alaska has a false political speech law. *See* Alaska Stat. Ann. § 15.56.014(a)(3).

In Alaska:

A person commits the crime of campaign misconduct in the second degree if the person . . . knowingly makes a communication, as that term is defined in Alaska Stat. Ann. § 15.13.400, (A) containing false factual information relating to a candidate for an election; (B) that the person knows to be false; and (C) that would provoke a reasonable person under the circumstances to a breach of the peace or that a reasonable person would construe as damaging to the candidate's reputation for honesty or integrity, or to the candidate's qualifications to serve if elected to office.

Id.

II. DEFINITION OF EXPENDITURE/EXPRESS ADVOCACY

Alaska's "expenditure" definition relies on a "for the purpose of influencing" standard, a *Furgatch* standard, and an electioneering communications standard.

An "expenditure" is defined, in relevant part, as:

a purchase or a transfer of money or anything of value, or promise or agreement to purchase or transfer money or anything of value, incurred or made for the purpose of

(i) influencing the nomination or election of a candidate or of any individual who files for nomination at a later date and becomes a candidate . . .

(iv) influencing the outcome of a ballot proposition or question;

Id. § 15.13.400(6).

An "expenditure" includes an "express communication" and an "electioneering communication" but does not include an "issues communication." *Id.*

"Express communication" means "a communication that, when read as a whole and with limited reference to outside events, is susceptible of no other reasonable interpretation but as an exhortation to vote for or against a specific candidate." *Id.* § 15.13.400(7).

"Issues communication" means "a communication that (A) directly or indirectly identifies a candidate; and (B) addresses an issue of national, state, or local political importance and does not support or oppose a candidate for election to public office." *Id.* § 15.13.400(12).

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“Independent expenditure” means “an expenditure that is made without the direct or indirect consultation or cooperation with, or at the suggestion or the request of, or with the prior consent of, a candidate, a candidate’s campaign treasurer or deputy campaign treasurer, or another person acting as a principal or agent of the candidate.” *Id.* § 15.13.400(10).

“Electioneering communication” means “a communication that (A) directly or indirectly identifies a candidate; (B) addresses an issue of national, state, or local political importance and attributes a position on that issue to the candidate identified; and (C) occurs within the 30 days preceding a general or municipal election.” *Id.* § 15.13.400(5).

III. ELECTIONEERING COMMUNICATIONS

(a) Regulation of ECs. Alaska regulates electioneering communications.

“Electioneering communication” means “a communication that (A) directly or indirectly identifies a candidate; (B) addresses an issue of national, state, or local political importance and attributes a position on that issue to the candidate identified; and (C) occurs within the 30 days preceding a general or municipal election.” *Id.* § 15.13.400(5). An EC is included in the definition of an expenditure. *Id.* § 15.13.400(6).

(b) What Content Triggers Regulation as an Electioneering Communication. A communication is regulated if it “(A) directly or indirectly identifies a candidate;” and “(B) addresses an issue of national, state, or local political importance and attributes a position on that issue to the candidate identified.” *Id.* § 15.13.400(5).

(c) Types of Media Covered. The definition of “electioneering communication” appears to cover any medium of communication. *Id.*

(d) Reporting Threshold. Alaska does not appear to have any dollar threshold for reporting. *See id.* § 15.13.040(d) and (e). (As discussed above in Section II, ECs are treated as expenditures/IEs and must be reported as such. A more-than-\$250 threshold applies for expedited reporting of IEs that are “made within nine days of an election.” *Id.* § 15.13.110(h).)

(e) Time Windows. The time window is “within the 30 days preceding a general or municipal election.” *Id.* § 15.13.400(5).

(f) Jurisdictional Limitation. There is no jurisdictional limitation on the definition of an EC. *Id.*

(g) Donor Disclosure. Donor disclosure appears to be limited to donors of earmarked funds. Specifically, EC/IE reports are required to report “all contributions made to the

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person, *if any, for the purpose of influencing the outcome of an election.*” *Id.* § 15.13.040(e)(5) (emphasis added).²

(The statute is arguably ambiguous on the point about donor disclosure, in that the language about earmarked funds technically modifies the requirement to report contributions in the aggregate. The next clause, which addresses the itemization requirement, applies to “all contributions.” *See id.* However, the correct interpretation appears to be to itemize only donors of earmarked funds, since it would make little sense to report only earmarked funds in the aggregate, but to itemize a broader universe of donors. *See also* Alaska Pub. Offices Comm’n Adv. Op. No. 10-31-CD (NEA-Alaska) (limiting donor disclosure requirement in disclaimers to contributions made in response to “a special solicitation for monies to be used for the independent expenditures.”).

(IFS has also reviewed the EC/IE reports filed in Alaska by many non-profit entities and trade associations and have confirmed that many do not disclose any donor information.)

(h) 501(c)(3) Exemption. There is no specific 501(c)(3) exemption for sponsors of electioneering communications.

(i) Media Exemption. Alaska’s EC law does not appear to contain a media exemption.

(j) Other Exemptions. An expenditure under Alaska law includes an EC but does not include an “issues communication,” defined as “a communication that (A) directly or indirectly identifies a candidate; and (B) addresses an issue of national, state, or local political importance and does not support or oppose a candidate for election to public office.” *Id.* §§ 15.13.400(6)(C) and (12).

IV. DONOR DISCLOSURE FOR INDEPENDENT EXPENDITURES MADE BY ENTITIES THAT ARE NOT PACS

(a) Donor Disclosure. As discussed above in Section III(g), donor disclosure appears to be limited to donors of earmarked funds. Specifically, IE reports are required to report “all contributions made to the person, *if any, for the purpose of influencing the outcome of an election.*” *Id.* § 15.13.040(e)(5) (emphasis added).³ (See note in Section III(g) regarding the interpretation of the statute on this point.)

(b) Threshold for Donor Disclosure. There is no threshold for donor disclosure generally (although disclosure of donors’ occupation and employer information is required for anyone who gives more than a total of \$50 per calendar year). *Id.* § 15.13.040(e)(5).

² Alaska requires most persons and organizations to establish a “political activities account” prior to making ECs/IEs, and all ECs/IEs must be funded from this account. *Id.* § 15.13.052(a). There does not appear to be any provision that limits disclosure to those who contribute to a political activities account.

³ Alaska requires most persons and organizations to establish a “political activities account” prior to making ECs/IEs, and all ECs/IEs must be funded from this account. *Id.* § 15.13.052(a). There does not appear to be any provision that limits disclosure to those who contribute to a political activities account.

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V. DISCLAIMER REQUIREMENTS FOR INDEPENDENT EXPENDITURES AND ELECTIONEERING COMMUNICATIONS

(a) Form of Disclaimer. Disclaimers are required for “political communications,” specifically including independent expenditures. Alaska Admin. Code tit. 2, § 50.306. For IEs with a print or video component, a printed disclaimer is required; for communications transmitted through radio or other media and in communications with an audio component, a spoken disclaimer is required. *See* Alaska Stat. Ann. §§ 15.13.135(b), 15.13.090. (It is not entirely clear whether a video communication that also contains audio is required to have both a printed and a spoken disclaimer. *See id.*)

(b) Content of Disclaimer. First, a person who makes an independent expenditure “shall place the following statement in the mailing, literature, advertisement, or other communication so that it is readily and easily discernible: This NOTICE TO VOTERS is required by Alaska law. (I/we) certify that this (mailing/literature/advertisement) is not authorized, paid for, or approved by the candidate.” *Id.* § 15.13.135(b)(2).

As a general rule, all communications must include “the words ‘paid for by’ followed by the name and address of the person paying for the communication.” *Id.* § 15.13.090.

Additionally, a person shall clearly:

(1) provide the person’s address or the person’s principal place of business;

(2) for a person other than an individual or candidate, include

(A) the name and title of the person’s principal officer;

(B) a statement from the principal officer approving the communication; and

(C) unless the person is a political party, identification of the name and city and state of residence or principal place of business, as applicable, of each of the person’s three largest contributors under AS 15.13.040(e)(5),⁴ if any, during the 12-month period before the date of the communication.

Id. § 15.13.090(a).

(c) Types of Media Covered. Disclaimer requirements apply to “all communications.” *Id.* § 15.13.090(a). “Communications” includes “print or broadcast media, including radio, television, cable, and satellite, the Internet, or through a mass mailing.” *Id.* § 15.13.400(3).

(d) Exceptions. A disclaimer “need not be affixed to an object used for a political communication if the size or nature of the object makes it impractical to affix that information.” Alaska Admin. Code tit. 2, § 50.306. Such objects include “pencils, pens,

⁴ As discussed above in Section III(g), the donors required to be disclosed under this provision appear to be limited to donors of earmarked funds.

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buttons, or other objects that are smaller than 3.5 inches by 5 inches in size.” *Id.* A “political communication” requiring a disclaimer also does not include any of the following: envelopes paid for by the campaign that are used solely to convey the campaign’s communications; signs created by an individual or nongroup entity for a total cost of less than \$500; T-shirts, ballcaps, and similar items of personal apparel of minimal value; and berry buckets, coffee cups, water bottles, and similar objects having a principal purpose not related to campaigns or elections. *Id.*

VI. STATUTORY OR REGULATORY AUTHORITY FOR SUPER PACS

Alaska has source prohibitions and contribution limits, and thus there is no statutory authority for super PACs. *See* Alaska Stat. Ann. § 15.13.074(f) (prohibiting corporations and other entities that do not qualify as a “group” or “nongroup entity” from contributing to a “group” or “nongroup entity”).

VII. MAJOR/PRIMARY PURPOSE FOR PAC STATUS

A “group” is “any combination of two or more individuals acting jointly who organize for *the principal purpose* of influencing the outcome of one or more elections and who take action the major purpose of which is to influence the outcome of an election.” *Id.* § 15.13.400(8) (emphasis added).

VIII. PAC STATUS DETERMINATION AND THRESHOLDS

(a) PAC Definition. Alaska’s definition for a “group” is not based on expenditures and contributions, but rather on whether the group “take[s] action the major purpose of which is to influence the outcome of an election.” *Id.*

(b) Threshold for PAC Registration/Reporting. There is no dollar threshold; a group must register prior to making an expenditure in support of or in opposition to a candidate. *Id.* § 15.13.050. Every group must report under *id.* § 15.13.040(b).

(c) Threshold for Disclosure of PAC Donors. “For all contributions in excess of \$100 in the aggregate a year,” a group must report “the name, address, principal occupation, and employer of the contributor, and the date and amount contributed by each contributor.” *Id.* § 15.13.040(b)(2).

(d) Disclosure of Donors’ Employer Information on PAC Reports. Employer information is required for individuals who make a contribution to a group in excess of \$100 in aggregate during the calendar year. *See id.*

IX. REGULATION OF “INCIDENTAL COMMITTEES”

Alaska regulates “nongroup entities,” defined as “a person, other than an individual, that takes action the major purpose of which is to influence the outcome of an election, and that (A) cannot participate in business activities; (B) does not have shareholders who have a

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claim on corporate earnings; and (C) is independent from the influence of business corporations.” *Id.* § 15.13.400(13). A “nongroup entity” is “a nonprofit corporation, company, partnership, firm, association, organization, business trust, or society that qualifies to register to participate in an election campaign in support of or in opposition to a candidate, ballot proposition, or initiative proposal application.” Alaska Admin. Code tit. 2, § 50.405(6).

“Nongroup entities” are required to register and to file periodic reports. *See* Alaska Stat. Ann. §§ 15.13.050, 15.13.040(j)-(l), and 15.13.110.

(*See also Alaska Right to Life Comm. v. Miles*, 441 F.3d 773 (9th Cir. 2006) (discussing and upholding nongroup entity registration and reporting requirements).)

X. PRIVATE ENFORCEMENT ACTIONS

Alaska provides for private enforcement actions (after filing a complaint with the Alaska Public Offices Commission). *See* Alaska Stat. Ann. § 15.13.380(g)-(h).

XI. COORDINATION

(a) **“Content Prong.”** Alaska’s coordination law applies to making “expenditures.” *See id.* § 15.13.400(10); Alaska Admin. Code tit. 2, § 50.405(5). As discussed above in Section II, Alaska’s “expenditure” definition is very vague and broad. *See* Alaska Stat. Ann. § 15.13.400(6).

(b) **Former Employee/Vendor “Conduct Prong.”** Alaska’s coordination law does not specifically address former employees or vendors. *See id.* § 15.13.400(10); Alaska Admin. Code tit. 2, § 50.405(5).

(c) **Public Information Exemption.** There is no express exemption for public information. *See id.*

XII. LOBBYING

(a) **General Lobbyist/Lobbyist Principal Donor Disclosure.** Alaska does not appear to require donor disclosure on either lobbyist registration or lobbying reports. *See* Alaska Stat. §§ 24-45-041, -051, -061.

(b) **Grassroots Lobbying.** Grassroots lobbying does not, in and of itself, trigger registration and reporting requirements in Alaska.

By reference to the definition of a “lobbyist,” Alaska defines lobbying as “communicat[ing] directly or through [an] agent[] with any public official for the purpose of influencing legislation or administrative action.” *Id.* § 24.45.171. The phrase “influencing legislative and administrative action” means “*to communicate directly* for the purpose of introducing, promoting, advocating, supporting, modifying, opposing, or

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delaying or seeking to do the same with respect to any legislative or administrative action.” *Id.* § 24.45.171(9) (emphasis added).

(IFS has confirmed this understanding with the Alaska Public Offices Commission. Entities that are already registered as lobbyist employers in Alaska are required to report “payment[s] for or in connection with *soliciting or urging other persons* to enter into direct communication with a public official.” *Id.* § 24.45.171(13)(E) (emphasis added).)

(c) Forms of Grassroots Lobbying Communications Regulated. Alaska does not specify which forms of grassroots activity are covered. Thus, any communication that contains a “call to action” (*i.e.*, solicits others to communicate with covered officials) could be a reportable grassroots lobbying activity. *See id.*

(d) Grassroots Lobbying Reference to Specific Legislation. N/A

(e) Grassroots Lobbying Registration and Reporting Thresholds. N/A

(f) Donor Disclosure for Grassroots Lobbying. N/A

(g) Earmarked Donor Disclosure for Grassroots Lobbying. N/A

(h) Donor Disclosure Threshold for Grassroots Lobbying (If Not Limited to Earmarked Donors). N/A

(i) Threshold Indexing (If Grassroots Lobbying Is Regulated). N/A

ARIZONA

I. FALSE POLITICAL SPEECH LAW

Arizona does not have a false political speech law.

II. DEFINITION OF EXPENDITURE/EXPRESS ADVOCACY

Arizona has a very vague and broad definition of “expenditure,” and its express advocacy definition – used in the definition of an “independent expenditure” – also is broader than the *Furgatch* standard.

An “expenditure” is defined as “any purchase, payment or other thing of value that is made by a person *for the purpose of influencing an election.*” Ariz. Rev. Stat. § 16-901(25) (emphasis added).

An “independent expenditure” is defined in terms of whether a communication “[e]xpressly advocates the election or defeat of a clearly identified candidate.” *Id.* § 16-901(31)(a).

“Expressly advocates” is defined as:

(A) . . . 1. Conveying a communication containing a phrase such as “vote for,” “elect,” “reelect,” “support,” “endorse,” “cast your ballot for,” “(name of candidate) in (year),” “(name of candidate) for (office),” “vote against,” “defeat,” “reject” or a campaign slogan or words that in context can have no reasonable meaning other than to advocate the election or defeat of one or more clearly identified candidates.

2. Making a general public communication, such as in a broadcast medium, newspaper, magazine, billboard or direct mailer *referring to one or more clearly identified candidates and targeted to the electorate of that candidate(s) that in context can have no reasonable meaning other than to advocate the election or defeat of the candidate(s), as evidenced by factors such as the presentation of the candidate(s) in a favorable or unfavorable light, the targeting, placement or timing of the communication or the inclusion of statements of the candidate(s) or opponents.*

(B) A communication within the scope of subsection A, paragraph 2 shall not be considered as one that expressly advocates merely because it presents information about the voting record or position on a campaign issue of three or more candidates, so long as it is not made in coordination with a candidate, political party, agent of the candidate or party or a person who is coordinating with a candidate or candidate’s agent.

Id. § 901.01 (emphasis added).

III. ELECTIONEERING COMMUNICATIONS

Arizona does not regulate ECs.

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IV. DONOR DISCLOSURE FOR INDEPENDENT EXPENDITURES MADE BY ENTITIES THAT ARE NOT PACS

(a) **Donor Disclosure.** Donor disclosure is not required on IE reports. *See id.* § 16-926(H) (general IE reporting requirement); *see also id.* § 16-941(D) (IE reporting requirement under the Citizens Clean Elections Act).

(b) **Threshold for Donor Disclosure.** N/A

V. DISCLAIMER REQUIREMENTS FOR INDEPENDENT EXPENDITURES AND ELECTIONEERING COMMUNICATIONS

(a) **Form of Disclaimer.** Advertisements that are “[b]roadcast on television or in a video or film” must contain a disclaimer that is both written and spoken, but if the written disclaimer is displayed for at least 1/6 of the ad duration or four seconds – whichever is greater – then the spoken component is not required. *Id.* § 16-925(D)(4)(a).

(b) **Content of Disclaimer.** IEs must contain the following:

1. The words “paid for by”, followed by the name of the person making the expenditure for the advertisement or fund-raising solicitation.
2. Whether the expenditure was authorized by any candidate, followed by the identity of the authorizing candidate, if any.

Id. § 16-925(A).

(c) **Types of Media Covered.** The disclaimer requirement applies to any “expenditure” for an “advertisement,” and the latter is defined as “information or materials, other than nonpaid social media messages, that are mailed, e-mailed, posted, distributed, published, displayed, delivered, broadcasted or placed in a communication medium and that are for the purpose of influencing an election.” *Id.* §§ 16-925(A) and -901(1).

(d) **Exceptions.** The disclaimer requirement does not apply to:

1. Social media messages, text messages or messages sent by a short message service.
2. Advertisements that are placed as a paid link on a website, if the message is not more than two hundred characters in length and the link directs the user to another website that complies with this section.
3. Advertisements that are placed as a graphic or picture link, if the statements required in this section cannot be conveniently printed due to the size of the graphic or picture and the link directs the user to another website that complies with this section.
4. Bumper stickers, pins, buttons, pens and similar small items on which the statements required in this section cannot be conveniently printed.

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5. A solicitation of contributions by a separate segregated fund.
6. A communication by a tax-exempt organization solely to its members.
7. A published book or a documentary film or video.

Id. § 16-925(E).

VI. STATUTORY OR REGULATORY AUTHORITY FOR SUPER PACS

Arizona's statute does not appear to provide for super PACs specifically, but a "corporation, limited liability company or labor organization may make unlimited contributions to persons other than candidate committees," and the term "person" includes PACs. *See id.* § 16-916(B) and -901(39). Thus, the Arizona statute, in effect, permits super PACs.

VII. MAJOR/PRIMARY PURPOSE FOR PAC STATUS

PAC status is based on "the primary purpose" of an organization. *Id.* § 16-905(A).

VIII. PAC STATUS DETERMINATION AND THRESHOLDS

(a) PAC Definition. An entity is a "political action committee if both of the following apply":

1. The entity is organized for the primary purpose of influencing the result of an election.
2. The entity knowingly receives contributions or makes expenditures, in any combination, of at least one thousand dollars in connection with any election during a calendar year.

Id. § 16-905(B).

(As discussed above in Section II, however, Arizona's "expenditure" definition is very vague and broad.)

(b) Threshold for PAC Registration/Reporting. The threshold for PAC registration and reporting is receiving or making "contributions" or "expenditures" – "in any combination" – totaling at least \$1,000 in a calendar year. *Id.*

This threshold is adjusted for inflation. *See id.* § 16-905(G).

(c) Threshold for Disclosure of PAC Donors. Donors are required to be disclosed if they have given more than \$50 during an "election cycle." *Id.* § 16-926(B)(2)(a)(i). An "election cycle" is defined as "the two-year period between successive statewide general elections or, for cities and towns, the two-year period between the scheduled date of the city's or town's second, runoff or general election and the scheduled date of the immediately

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following second, runoff or general election, however designated by the city or town.” *Id.* § 16-901(18).⁵

(d) Disclosure of Donors’ Employer Information on PAC Reports. Donors’ employer information is required. *Id.* § 16-926(B)(2)(a)(i).

IX. REGULATION OF “INCIDENTAL COMMITTEES”

Arizona does not regulate incidental committees.

X. PRIVATE ENFORCEMENT ACTIONS

Arizona does not provide for private enforcement actions. *See id.* §§ 16-938 and -1021 (providing for enforcement by the relevant “filing officers” upon receiving complaints, and by the state Attorney General and county/city attorneys).

XI. COORDINATION

(a) “Content Prong.” Arizona’s coordination law regulates “express advocacy.” *See id.* §§ 16-922, -901(31)(a), and -901.01. As discussed above in Section II, Arizona’s express advocacy definition is broader than the *Furgatch* standard. *See id.* § 16-901.01.

(b) Former Employee/Vendor “Conduct Prong.” There is “rebuttable evidence of coordination” if an “agent” of a sponsor of an IE “is or has been authorized to raise or spend monies on the candidate’s behalf” during the same “election cycle.” *Id.* § 16-922(C)(2). As discussed above in Section VIII(c), an “election cycle” is defined as “*the two-year period between successive statewide general elections or, for cities and towns, the two-year period between the scheduled date of the city’s or town’s second, runoff or general election and the scheduled date of the immediately following second, runoff or general election, however designated by the city or town.*” *Id.* § 16-901(18) (emphasis added).⁶

(c) Public Information Exemption. An expenditure is considered to be coordinated only if it is “based on nonpublic information about a candidate’s or candidate committee’s plans or needs that the candidate or candidate’s agent provides to the person making the expenditure or that person’s agent.” *Id.* § 16-922(B)(2)(a). Thus, expenditures that are made on the basis of public information are exempt.

XII. LOBBYING

(a) General Lobbyist/Lobbyist Principal Donor Disclosure. Donor disclosure is not required on lobbying registrations or reports. *See id.* §§ 41-1232, -1232.02, and -1232.05.

⁵ A different definition for “election cycle” applies for recall elections. *See id.*

⁶ A different definition for “election cycle” applies for recall elections. *See supra.*

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(b) Grassroots Lobbying. “Lobbying” is defined in terms of “attempting to influence the passage or defeat of any legislation by *directly communicating with any legislator* or attempting to influence any formal rulemaking proceeding pursuant to chapter 6 of this title 1 or rulemaking proceedings that are exempt from chapter 6 of this title by *directly communicating with any state officer or employee.*” *Id.* § 41-1231(11) (emphasis added). Thus, grassroots lobbying does not appear to be regulated.

(IFS has informally confirmed with the Arizona Secretary of State’s office that grassroots lobbying is not regulated by the state.)

(c) Forms of Grassroots Lobbying Communications Regulated. N/A

(d) Grassroots Lobbying Reference to Specific Legislation. N/A

(e) Grassroots Lobbying Registration and Reporting Thresholds. N/A

(f) Donor Disclosure for Grassroots Lobbying. N/A

(g) Earmarked Donor Disclosure for Grassroots Lobbying. N/A

(h) Donor Disclosure Threshold for Grassroots Lobbying (If Not Limited to Earmarked Donors). N/A

(i) Threshold Indexing (If Grassroots Lobbying Is Regulated). N/A

ARKANSAS

I. FALSE POLITICAL SPEECH LAW

Arkansas does not appear to have a false political speech law.

II. DEFINITION OF EXPENDITURE/EXPRESS ADVOCACY

An “expenditure” is “a purchase, payment, distribution, gift, loan, or advance of money or anything of value, and a contract, promise, or agreement to make an expenditure, made *for the purpose of influencing* the nomination or election of any candidate.” Ark. Code Ann. § 7-6-201(8) (emphasis added).

An “independent expenditure” is “an expenditure which is not a contribution and:

(A) *Expressly advocates* the election or defeat of a clearly identified candidate for office;

(B) Is made without arrangement, cooperation, or consultation between a candidate or an authorized committee or agent of the candidate and the person making the expenditure or an authorized agent of that person; and

(C) Is not made in concert with or at the request or suggestion of a candidate or an authorized committee or agent of the candidate.”

Id. § 7-6-201(11) (emphasis added); *see also* Code Ark. R. 153.00.2-200(n).

“Express advocacy” is not further defined.

(IFS is aware that the Arkansas Ethics Commission has construed the definition of “expenditure” narrowly to regulate only *Buckley/MCFL* express advocacy. *See* Ark. Ethics Comm’n Adv. Op. Nos. 2006-EC-004 (Apr. 21, 2006), 2006-EC-005 (June 16, 2006), and 2008-EC-008 (Aug. 15, 2008).)

III. ELECTIONEERING COMMUNICATIONS

Arkansas does not regulate “electioneering communications.”

IV. DONOR DISCLOSURE FOR INDEPENDENT EXPENDITURES MADE BY ENTITIES THAT ARE NOT PACS

(a) **Donor Disclosure.** General donor disclosure *appears* to be required.

IE reports must disclose the “name and address of each person who made a contribution or contributions that in the aggregate exceeded fifty dollars.” Code Ark. R. 153.00.8-702(b)(5). Such persons must also report “the name and address of each person who contributed a nonmoney item.” *Id.* 153.00.8-702(b)(7).

Arguably, only donors who provide funds “for the purpose of influencing the nomination or election of any candidate” should be required to be disclosed, *see* Ark. Code. Ann. § 7-

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6-201(4)(A) (defining “contribution”), but it is unclear whether donor disclosure on IE reports is, in fact, subject to this limitation.

There does not appear to be any provision under which donors may avoid disclosure if they prohibit their donations from being used to fund IEs, or if IEs are funded out of a segregated account.

(IFS is aware that the Arkansas Ethics Commission’s IE reporting form appears to suggest that donor disclosure is only required for committees. *See* Ark. Ethics Comm’n, Independent Expenditure Report (rev. Aug. 2015), at [http://www.arkansasethics.com/forms/2015-16%20REVISED%20FORMS%20AND%20INSTRUCTIONS/11.2%20Independent%20Expenditure%20Report...%20\(2015\).pdf](http://www.arkansasethics.com/forms/2015-16%20REVISED%20FORMS%20AND%20INSTRUCTIONS/11.2%20Independent%20Expenditure%20Report...%20(2015).pdf).)

(b) Threshold for Donor Disclosure. The threshold for donor disclosure is aggregate contributions exceeding \$50, or a contribution of a nonmoney item in any amount. Code Ark. R. 153.00.8-702(b)(5), (7). (It is unclear over what period of time this threshold applies, although arguably it is for the reporting period.)

V. DISCLAIMER REQUIREMENTS FOR INDEPENDENT EXPENDITURES AND ELECTIONEERING COMMUNICATIONS

(a) Form of Disclaimer. Arkansas does not require a particular form of disclaimer; covered communications are merely required to “clearly contain” the words of the required disclaimer. Ark. Code Ann. § 7-1-103(a)(7).

(b) Content of Disclaimer. Paid “articles, statements, or communications appearing in any newspaper . . . [that are] intended or calculated to influence the vote of any elector in any election . . . shall clearly contain the words ‘Paid Political Advertisement’, ‘Paid Political Ad’, or ‘Paid for by’ the candidate, committee, or person who paid for the message.” *Id.*

Paid “articles, statements, or communications appearing in any radio, television, or any other electronic medium intended or calculated to influence the vote of any elector in any election . . . shall clearly contain the words: (a) ‘Paid political advertisement’ or ‘paid political ad’; or (b) ‘Paid for by,’ ‘sponsored by,’ or ‘furnished by’ the true sponsor of the advertisement.” *Id.*

(c) Types of Media Covered. Disclaimer requirements apply to “articles, statements, or communications appearing in any newspaper,” as well as to communications via radio, television, or any other “electronic medium.” *Id.* § 7-1-103(a).

(d) Exceptions. There are no apparent exceptions to the disclaimer requirements.

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VI. STATUTORY OR REGULATORY AUTHORITY FOR SUPER PACS

Arkansas provides for “independent expenditure committees,” which means “any person that receives contributions from one (1) or more persons in order to make an independent expenditure and is registered [with the Secretary of State] prior to making expenditures.” Ark. Code Ann. § 7-6-201(12); *see also* Code Ark. R. 153.00.2-200(o).

Arkansas law does not limit independent expenditures or contributions to independent expenditure committees, and thus state law permits super PACs. *Compare id.* with Ark. Code Ann. § 7-6-201(1)(A) (defining “approved political action committee” and limiting contributions to such PACs to \$5,000 per calendar year) and Ark. Const. § 28(c)(1)(A) (\$5,000 per-calendar year limit on contributions to “approved political action committees”).

VII. MAJOR/PRIMARY PURPOSE FOR PAC STATUS

Arkansas does not have a “major purpose” or “primary purpose” requirement for “approved political action committees” or for “independent expenditure committees.” *See* Ark. Code Ann. § 7-6-201(1)(A) and (12); Code Ark. Rs. 153.00.6-500(a) and 153.00.2-200(o).

VIII. PAC STATUS DETERMINATION AND THRESHOLDS

(a) PAC Definition. PAC status is triggered by accepting contributions and making contributions and independent expenditures.

Arkansas defines an “approved political action committee” as “any person that:

- (i) *Receives contributions* from one (1) or more persons *in order to make contributions* to candidates, ballot question committees, legislative question committees, political parties, county political party committees, or other political action committees;
- (ii) Does not accept any contribution or cumulative contributions in excess of five thousand dollars (\$5,000) from any person in any calendar year; and
- (iii) Registers pursuant to § 7-6-215 prior to making contributions.

Ark. Code Ann. § 7-6-201(1)(A) (emphasis added).

“‘Approved political action committee’ does not include an organized political party . . . , a county political party committee, the candidate's own campaign committee, an exploratory committee, or a ballot question committee or legislative question committee.” *Id.* § 7-6-201(1)(B).

An “independent expenditure committee” is defined as “any person that *receives contributions* from one (1) or more persons *in order to make an independent expenditure*

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and is registered [with the Secretary of State] prior to making expenditures.” Ark. Code Ann. § 7-6-201(12); *see also* Code Ark. R. 153.00.2-200(o).

(As discussed above in Section II, Arkansas defines IEs by reference to express advocacy, but express advocacy is not further defined. *See* Ark. Code Ann. § 7-6-201(11); *see also* Code Ark. R. 153.00.2-200(n).)

(b) Threshold for PAC Registration/Reporting. To qualify as an “approved political action committee,” a PAC must register with the Secretary of State within 15 days of accepting aggregate contributions exceeding \$500 in a calendar year. *Id.* § 7-6-215(a)(1)(A). Thereafter, the PAC must file reports within 15 calendar days after the end of each calendar quarter. *Id.* § 7-6-215(d)(1).

An IE committee is also required to register and report after accepting aggregate contributions exceeding \$500 in a calendar year and is required to report after making IEs totaling more than \$500 in a calendar year. *See id.* §§ 7-6-227(a)(1)(A) (registration) and -220(a) (reporting); *see also* Code Ark. R. 153.00.8-701(a)(1)(A) and -702(a) (same).

(c) Threshold for Disclosure of PAC Donors. On its quarterly reports, an “approved political action committee” must disclose information about each contributor who contributed more than \$500 in aggregate during a calendar year. *Id.* § 7-6-215(d)(1)(C).

IE committee reports must disclose each “person who made a contribution or contributions that in the aggregate exceeded fifty dollars.” Code Ark. R. 153.00.8-702(b)(5). Such persons must also report “the name and address of each person who contributed a nonmoney item.” *Id.* 153.00.8-702(b)(7).

(It is unclear over what period of time the \$50 donor disclosure threshold applies for IE committees.)

(d) Disclosure of Donors’ Employer Information on PAC Reports. Contributors’ employer information is required. *See* Ark. Code Ann. § 7-6-215(d)(1)(C) (for “approved political action committees”) and Code Ark. R. 153.00.8-702(b)(6) (for IE committees).

IX. REGULATION OF “INCIDENTAL COMMITTEES”

Arkansas does not appear to regulate “incidental committees.”

(As discussed above in Section VII, Arkansas’ lack of a major/primary purpose limitation in its definition of a political committee essentially functions as a regulation of “incidental committees.” *See* Ark. Code Ann. § 7-6-201(1)(A) and (12). On the other hand, Arkansas requires entities to *both* receive political contributions and make political contributions/expenditures in order for them to be regulated as PACs. *See id.*)

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X. PRIVATE ENFORCEMENT ACTIONS

Arkansas does not provide for private enforcement actions. Although any citizen may file a complaint against another person for a violation of campaign finance law, the investigation and enforcement authority rests with the Arkansas Ethics Commission. *See* Ark. Code Ann. § 7-6-218.

Note that a person “who considers himself or herself injured in his or her person, business, or property by final agency action” of the Ethics Commission is entitled to judicial review of the Commission’s decision. *Id.* §§ 25-15-212(a), 7-6-218(c). It is not clear whether this would permit a complainant to challenge the decision of the Ethics Commission in some cases.

XI. COORDINATION

(a) **“Content Prong.”** As discussed above in Section II, Arkansas’ IE definition is based on “express advocacy,” but “express advocacy” is not further defined. *See id.* § 7-6-201(11); *see also* Code Ark. R. 153.00.2-200(n).

(b) **Former Employee/Vendor “Conduct Prong.”** Arkansas law does not appear to address former employees and vendors. *See id.*

(c) **Public Information Exemption.** Arkansas law does not provide an express exemption for public information. *See id.*

XII. LOBBYING

(a) **General Lobbyist/Lobbyist Principal Donor Disclosure.** Arkansas does not require donor disclosure for lobbyists or their employers, either on registration statements or lobbying reports. *See* Ark. Code Ann. §§ 21-8-601, -604.

(b) **Grassroots Lobbying.** Arkansas broadly defines “lobbying” to include “communicating directly or *soliciting others to communicate* with any public servant with the purpose of influencing legislative action or administrative action.” *Id.* § 21-8-402(10) (emphasis added). This definition encompasses grassroots activities.

(c) **Forms of Grassroots Lobbying Communications Regulated.** Arkansas law does not specify what forms of grassroots communications are covered. Thus, any communication that solicits others to communicate with a public servant for the purpose of influencing legislative or administrative action would presumably be a covered lobbying communication. *See id.*

(d) **Grassroots Lobbying Reference to Specific Legislation.** There is no express requirement for a communication to reference specific legislation in order to be a covered lobbying communication. *See id.*

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(e) Grassroots Lobbying Registration and Reporting Thresholds. Grassroots lobbying triggers registration for any person who expends \$400 or more in a calendar quarter, including postage, for the express purpose of soliciting others to communicate with any public servant to influence any legislative action or administrative action of one or more governmental bodies. *Id.* § 21-8-402(11)(C).

The statute provides an exemption from the lobbyist registration and reporting requirements for a grassroots lobbying communication that either “has been filed with the Secretary of State or . . . has been published in the news media.” *Id.* “If the communication is filed with the Secretary of State, the filing shall include the approximate number of recipients.” *Id.*

(f) Donor Disclosure for Grassroots Lobbying. No donor disclosure is required.

(g) Earmarked Donor Disclosure for Grassroots Lobbying. N/A

(h) Donor Disclosure Threshold for Grassroots Lobbying (If Not Limited to Earmarked Donors). N/A

(i) Threshold Indexing (If Grassroots Lobbying Is Regulated). The threshold for grassroots lobbying registration is not indexed for inflation. *See id.*

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I. FALSE POLITICAL SPEECH LAW

California does not appear to have a false political speech law.

II. DEFINITION OF EXPENDITURE/EXPRESS ADVOCACY

California's "express advocacy" definition uses the *Furgatch* standard (although its wording does not follow *Furgatch* verbatim). While the regulatory definition of "express advocacy" purports to limit the *Furgatch* standard to a pre-election time window, it is arguably not materially different from the statutory definition of an IE, which applies the *Furgatch* standard year-round. However, California also has a broader "expenditure" definition that may be relevant in certain circumstances.

Independent Expenditure. "Independent expenditure" means an expenditure made by any person "in connection with a communication which expressly advocates the election or defeat of a clearly identified candidate or the qualification, passage or defeat of a clearly identified measure, or *taken as a whole and in context, unambiguously urges a particular result in an election* but which is not made to or at the behest of the affected candidate or committee." Cal. Gov't Code § 82031 (emphasis added).

Express Advocacy. A communication "expressly advocates" the election or defeat of a candidate or ballot measure "if it contains express words of advocacy . . . or, *within 60 days prior to an election* in which the candidate or measure appears on the ballot, the communication otherwise *refers to a clearly identified candidate or measure so that the communication, taken as a whole, unambiguously urges a particular result in an election.*" Cal. Gov't Code § 82025(c)(2) (emphasis added).

Expenditure. As discussed more below in Section VIII, as a general matter California's PAC definition is based on receiving/making contributions or making IEs. However, the definition of an "expenditure" is also relevant in certain circumstances. An "expenditure" is defined as any payment "unless it is clear from the surrounding circumstances that it is not made *for political purposes.*" Cal. Gov't Code § 82025 (emphasis added). "For political purposes" is defined as "[f]or the purpose of influencing or attempting to influence the action of the voters for or against the nomination or election of a candidate or candidates, or the qualification or passage of any measure." Cal. Code Regs. tit. 2, § 18225 (emphasis added).

III. ELECTIONEERING COMMUNICATIONS

(a) **Regulation of ECs.** California regulates electioneering communications. *Id.* § 85310.

(b) **What Content Triggers Regulation as an Electioneering Communication.** California requires disclosure for "a communication that clearly identifies a candidate for elective state office, but does not expressly advocate the election or defeat of the candidate." *Id.* § 85310(a).

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(c) Types of Media Covered. The law covers communications that are “disseminated, broadcast, or otherwise published.” *Id.*

(d) Reporting Threshold. Reports are required for persons who spend or promise to spend \$50,000 or more for an electioneering communication. *Id.*

This threshold is not indexed for inflation. *See id.*

(e) Time Windows. The time window for electioneering communications is 45 days before an election. *Id.*

(f) Jurisdictional Limitation. There is no jurisdictional limitation. *Id.*

(g) Donor Disclosure. The person making the electioneering communication must disclose the identity of any donor who contributed \$5,000 or more “*for the purpose of making a[n] electioneering] communication.*” *Id.* § 85310(b)(1) (emphasis added).

(h) 501(c)(3) Exemption. There does not appear to be an exemption for 501(c)(3) organizations.

(i) Media Exemption. There is no express exemption for media.

(j) Other Exemptions. N/A

IV. DONOR DISCLOSURE FOR INDEPENDENT EXPENDITURES MADE BY ENTITIES THAT ARE NOT PACS

(a) Donor Disclosure. A person that spends \$1,000 or more a year on independent expenditures qualifies as an independent expenditure committee and must file periodic and event-driven reports. *Id.* §§ 82013(b), 84200(b). Donor disclosure is *generally* not required. *See id.* §§ 85500, 84204, and 84200(a). (*See also* FPPC Forms 461 & 496, available at <http://www.fppc.ca.gov/forms.html>.)

But, there are two circumstances an entity may have to register as a “recipient committee” and disclose donors: (1) the entity receives \$2,000 or more in contributions (defined as a payment “made for political purposes”), Cal. Gov’t Code §§ 82013(a), 82015(a); or (2) the entity is a “multipurpose organization” that makes independent expenditures totaling more than \$50,000 in a one-year period or more than \$100,000 over four consecutive calendar years (unless expenditures are funded exclusively by nondonor funds), *id.* § 84222(c)(5). Once a multipurpose organization qualifies as a recipient committee, it must account for any remaining difference between its independent expenditures and contributions received for the purpose of funding these independent expenditures by reporting general donors through a LIFO accounting method. *Id.* § 84222(e)(1)(C) and (2).

(An independent expenditure committee may also have to disclose donors if it receives less than \$2,000 in contributions (thus not qualifying as a recipient committee) but has

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nevertheless solicited or accepted funds earmarked for political purposes in California. *See id.* § 84204(b).)

(b) Threshold for Donor Disclosure. If donor disclosure is required, donors are required to be disclosed if they have given a total of \$100 or more in a calendar year for California political activity, or \$1,000 or more in a calendar year under the LIFO accounting determination. Cal. Gov't Code §§ 84222(e)(1)(c) and (2) and 84211(f). (*See also* FPPC, Campaign Manual 4 (rev. Jun. 2016) Ch. 15 at 8, *available at* http://www.fppc.ca.gov/content/dam/fppc/NS-Documents/TAD/Campaign%20Manuals/Manual_4/Manual_4_Ch_15_Multipurpose_Organizations.pdf.)

Donors are exempt from disclosure if they designate, restrict, or prohibit their donations from being used for political contributions or expenditures in connection with California state and local elections. Cal. Gov't Code §§ 84222(e)(2)(A) and (B).

V. DISCLAIMER REQUIREMENTS FOR INDEPENDENT EXPENDITURES AND ELECTIONEERING COMMUNICATIONS

(a) Form of Disclaimer. California requires written and/or spoken disclaimers (depending on the medium) with respect to “advertisements” by “committees” (see Section IV, *supra* and Section IX, *infra*) that are made “for the purpose of supporting or opposing a candidate . . . or a ballot measure” *See* Cal. Gov't Code § 84501.

(b) Content of Disclaimer. Disclaimers must note who paid for the advertisement. Cal. Gov't Code § 84502. An IE also must state that no candidate has authorized the communication. *Id.* § 84506.5. Identification of “contributors” who gave \$50,000 or more may be required in some instances. *Id.* §§ 84503, 84501(c), 82013. Mass mailings require the disclosure of the committee's address. *Id.* § 84305; Cal. Code Regs. tit. 2, § 18435. (There are also disclaimer requirements for advertisements in relation to ballot measures where a paid spokesperson appears. *See* Cal. Gov't Code § 84511.)

(c) Types of Media Covered. The disclaimer requirements apply to any “general or public advertisement which is authorized and paid for by a committee for the purpose of supporting or opposing a candidate for elective office . . . or a ballot measure” Cal. Gov't Code § 84501(a). There are separate provisions for mass mailings, mass e-mails, radio, telephone calls, television and Internet video, print advertisements, and electronic media advertisements. *See* Cal. Gov't Code §§ 84305, 84504, 84504.1, 84504.2, 84504.3,

(d) Exceptions. Exempted from the disclaimer requirements are communications from an organization other than a political party to its members, a campaign button smaller than 10 inches in diameter, a bumper sticker smaller than 60 square inches, small tangible promotional items “upon which the disclosures . . . cannot be conveniently printed or displayed,” wearing apparel, sky writing, and electronic media advertisements where the disclaimer “is impracticable or would severely interfere with the committee's ability to

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convey the intended message because of the nature of the technology used to make the communication.” *Id.* § 84501(a)(2).

VI. STATUTORY OR REGULATORY AUTHORITY FOR SUPER PACS

There is no specific statutory or regulatory authority for super PACs. (A super PAC would constitute a recipient committee. *See* Cal. Gov’t Code § 82013(a).)

VII. MAJOR/PRIMARY PURPOSE FOR PAC STATUS

California does not impose a major or primary purpose test for PAC status. *See id.* § 82013.

VIII. PAC STATUS DETERMINATION AND THRESHOLDS

(a) PAC Definition. In general, the definition of a “committee” is based solely on receiving/making “contributions” and making “independent expenditures.” *See id.* § 82013. “Multipurpose organizations” also may become “recipient committees” by making “expenditures.” *Id.* § 84222(c)(5).

(As discussed above in Section II, California has a very vague and broad definition of “expenditure.”)

(b) Threshold for PAC Registration/Reporting. An organization must register as a recipient committee upon receiving \$2,000 in contributions in a calendar year or, if a multipurpose organization, upon making contributions or expenditures in excess of \$50,000 in a one-year period or \$100,000 in a consecutive four-year period. *Id.*

An “independent expenditure committee” is required to report after making IEs totaling more than \$1,000 during a calendar year. *Id.* § 82013(b). A “major donor committee” is required to report after making contributions totaling more than \$10,000 during a calendar year. *Id.* § 82013(c).

These thresholds are not adjusted for inflation. *See id.* §§ 82013(b) and (c) and 84222(c)(5).

(c) Threshold for Disclosure of PAC Donors. For most PACs that are required to disclose donors, the threshold is donors who contribute \$100 or more during the reporting period. *Id.* § 84211.

(d) Disclosure of Donors’ Employer Information on PAC Reports. Disclosure of donors’ employer information is required. *Id.*

IX. REGULATION OF “INCIDENTAL COMMITTEES”

California regulates three types of “incidental committees.” An organization that makes \$1,000 or more in independent expenditures or makes contributions of \$10,000 or more in a calendar year must report as independent committees and major donor committees,

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respectively. *See id.* § 82013. A 501(c) entity that does not solicit or accept any funds earmarked for California political activity, but that makes contributions or expenditures totaling more than \$50,000 in a 12-month period, or more than \$100,000 in any four consecutive calendar years in connection with California elections, is required to register and report as a “recipient committee.” *Id.* § 84222(a), (c)(5), and (d).

X. PRIVATE ENFORCEMENT ACTIONS

California allows for broad private enforcement actions. Any resident in the relevant jurisdiction can bring a civil action seeking monetary penalties for reporting violations and impermissible contributions or expenditures after filing a written request with state or local authorities (as appropriate), if the authorities either decline to take action or fail to respond within 120 days. Cal. Gov’t Code §§ 91004, 91005, 91007; *see also id.* § 91001. Plaintiffs who prevail in private rights of action receive half of the monetary penalty that is imposed, plus costs and attorney’s fees. *Id.* § 91009. However, a prevailing defendant in the private enforcement matter also may recover costs and attorney’s fees from the plaintiff. *Id.*

XI. COORDINATION

(a) **“Content Prong.”** California’s coordination law is encompassed within its treatment of independent expenditures. *See* Cal. Gov’t Code § 82031. As discussed above in Section II, the content prong of the definition of independent expenditure is based on the *Furgatch* standard.

(b) **Former Employee/Vendor “Conduct Prong.”** There is a rebuttable presumption of coordination if the “expenditure is made by or through any agent of the candidate or committee in the course of the agent’s involvement in the current campaign.” Cal. Code Regs. tit. 2, § 18225.7(c)(1). The “current campaign” means “the period beginning 12 months prior to the date of the primary or special election in which the candidate is on the ballot for an elective office and ending on the date of the general or special runoff election for that office.” *Id.* § 18225.7(d)(2).

This same limitation applies to former staff, common consultants, and the candidate’s family. *Id.* § 18225.7(d).

(c) **Public Information Exemption.** There appears to be a limited exception for certain public information. *Id.* § 18225.7(e)(2) (press releases).

XII. LOBBYING

(a) **General Lobbyist/Lobbyist Principal Donor Disclosure.** Donor disclosure is not generally required, except for a “lobbying coalition,” which is a group of ten or more persons formed primarily to influence legislative or administrative action. *See* Cal. Gov’t Code §§ 86103, 86105, 86112, 86113, 86115, and 86116; Cal. Code Regs. tit. 2, § 18616.4.

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(b) Grassroots Lobbying. California requires registration and reporting in connection with grassroots lobbying. Cal. Gov't Code § 82039(a)(1) (defining lobbyist as someone paid "to communicate directly or through his or her agents with any elective state official, agency official, or legislative official for the purpose of influencing legislative or administrative action."); *id.* § 82045(e) (A "payment to influence legislative or administrative action" includes, among other things, a "payment for or in connection with *soliciting or urging other persons* to enter into direct communication with any elective state official, legislative official or agency official.") (emphasis added).

(c) Forms of Grassroots Lobbying Communications Regulated. There are no particular forms of grassroots lobbying that are regulated.

(d) Grassroots Lobbying Reference to Specific Legislation. The definitions of "legislative action" and "administrative action" are quite broad. "Legislative action" means "the drafting, introduction, consideration, modification, enactment or defeat of any bill, resolution, amendment, report, nomination, or other matter by the Legislature or by either house or any committee . . . or by a member or employee . . . acting in his official capacity" as well as "the action of the Governor in approving or vetoing any bill." *Id.* § 82037. "Administrative action" is defined as "the proposal, drafting, development, consideration, amendment, enactment, or defeat by any state agency of any rule, regulation or other action in any ratemaking proceeding or any quasi-legislative proceeding." *Id.* § 82002(a)(1).

(The FPPC has advised IFS in conversations that only communications that urge or solicit others to support or oppose specific legislation or administrative action constitute grassroots activity. Urging or soliciting others to contact their legislators or government officials about general issues does not qualify as grassroots activity.)

(e) Grassroots Lobbying Registration and Reporting Thresholds. If a person or entity not otherwise regulated as a lobbyist or lobbyist employer spends \$5,000 or more during a calendar quarter on grassroots lobbying, reporting (but not registration) is required. Cal. Gov't Code §§ 86115, 86100(d).

(f) Donor Disclosure for Grassroots Lobbying. Lobbyists and lobbyist employers are not required to disclose their donors. Lobbying coalitions, however, must disclose their members. *See* Cal. Gov't Code §§ 86103, 86105, 86112, 86113, 86115, and 86116; Cal. Code Regs. tit. 2, § 18616.4(b).

(g) Earmarked Donor Disclosure for Grassroots Lobbying. N/A

(h) Donor Disclosure Threshold for Grassroots Lobbying (If Not Limited to Earmarked Donors). N/A

(i) Threshold Indexing (If Grassroots Lobbying Is Regulated). N/A

COLORADO

I. FALSE POLITICAL SPEECH LAW

Colorado has a false political speech law.

In Colorado:

(1)(a) No person shall knowingly make, publish, broadcast, or circulate or cause to be made, published, broadcasted, or circulated in any letter, circular, advertisement, or poster or in any other communication any false statement designed to affect the vote on any issue submitted to the electors at any election or relating to any candidate for election to public office . . .

(b) Any person who violates any provision of paragraph (a) of this subsection (1) commits a class 1 misdemeanor and, upon conviction thereof, shall be punished as provided in section 18-1.3-501, C.R.S.

(2)(a) No person shall recklessly make, publish, broadcast, or circulate or cause to be made, published, broadcasted, or circulated in any letter, circular, advertisement, or poster or in any other communication any false statement designed to affect the vote on any issue submitted to the electors at any election or relating to any candidate for election to public office. Notwithstanding any other provision of law, for purposes of this subsection (2), a person acts “recklessly” when he or she acts in conscious disregard of the truth or falsity of the statement made, published, broadcasted, or circulated.

(b) Any person who violates any provision of paragraph (a) of this subsection (2) commits a class 2 misdemeanor and, upon conviction thereof, shall be punished as provided in section 18-1.3-501, C.R.S.

(3) For purposes of this section, “person” means any natural person, partnership, committee, association, corporation, labor organization, political party, or other organization or group of persons, including a group organized under section 527 of the internal revenue code.

Colo. Rev. Stat. § 1-13-109.

II. DEFINITION OF EXPENDITURE/EXPRESS ADVOCACY

Colorado has relatively broad definitions of “expenditure” and “independent expenditure.” The state does not define “express advocacy.”

An “expenditure” means “any purchase, payment, distribution, loan, advance, deposit, or gift of money by any person for the purpose of expressly advocating the election or defeat of a candidate or supporting or opposing a ballot issue or ballot question.” Colo. Const. art. XXVIII, § 2(8).

“Express advocacy” is not defined under state law.

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(IFS is aware that the Colorado Supreme Court has construed “express advocacy” narrowly. *See Colo. Ethics Watch v. Senate Majority Fund, LLC*, 269 P.3d 1248 (Colo. 2012).)

An “independent expenditure” means “an expenditure that is not controlled by or coordinated with any candidate or agent of such candidate. Expenditures that are controlled by or coordinated with a candidate or candidate's agent are deemed to be both contributions by the maker of the expenditures, and expenditures by the candidate committee.” Colo. Const. art. XXVIII, § 2(9).

III. ELECTIONEERING COMMUNICATIONS

(a) Regulation of ECs. Colorado regulates “electioneering communications.” *See id.* § 6.

(b) What Content Triggers Regulation as an Electioneering Communication. A communication is regulated if it “unambiguously refers to any candidate” and is disseminated within the time periods and to the audiences specified below. *Id.* § 2(7)(a).

(c) Types of Media Covered. Electioneering communications include any communication broadcast by television or radio; printed in a newspaper or on a billboard; directly mailed or delivered by hand to personal residences; or otherwise distributed. *Id.*

(d) Reporting Threshold. The threshold for reporting is making ECs totaling \$1,000 or more in a calendar year. *Id.* § 6(1).

(e) Time Windows. The time window is communications distributed within 30 days before a primary election or 60 days before a general election. *Id.* § 2(7)(a).

(f) Jurisdictional Limitation. Electioneering communications are those distributed to an audience that includes members of the electorate for such public office. *Id.*

(g) Donor Disclosure. Donor disclosure is required for contributors giving more than \$250 per calendar year, and it appears to be limited to those funds earmarked “for an electioneering communication.” *Id.* § 6(1). The name and address for each covered contributor must be disclosed, and, if the contributor is a natural person, the individual’s occupation and employer must also be disclosed. *Id.*

(h) 501(c)(3) Exemption. There is no specific 501(c)(3) exemption for sponsors of electioneering communications.

(i) Media Exemption. Colorado exempts the following from the definition of an EC:

- “Any news articles, editorial endorsements, opinion or commentary writings, or letters to the editor printed in a newspaper, magazine or other periodical not owned or controlled by a candidate or political party”;
- “Any editorial endorsements or opinions aired by a broadcast facility not owned or controlled by a candidate or political party”;

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Id. § 2(7)(b).

(j) Other Exemptions. Other exemptions apply for:

- “Any communication by persons made in the regular course and scope of their business or any communication made by a membership organization solely to members of such organization and their families”;
- “Any communication that refers to any candidate only as part of the popular name of a bill or statute.”

Id.

IV. DONOR DISCLOSURE FOR INDEPENDENT EXPENDITURES MADE BY ENTITIES THAT ARE NOT PACS

(a) Donor Disclosure. As outlined in more detail below, any person who spends more than \$1,000 in the aggregate in a calendar year for making IEs is required to disclose donors of earmarked donations of more than \$250 in a year.

Any person is required to register as an “independent expenditure committee” if they either (a) accept aggregate donations exceeding \$1,000 “for the purpose of making” an IE, or (b) spend more than \$1,000 in a calendar year on IEs. Colo. Rev. Stat. §§ 1-45-103(11.5) and 1-45-107.5(3)(a).

Any person who spends more than \$1,000 in a calendar year for IEs must disclose the name and address of each person who donates more than \$250 in a year “for the purpose of making an independent expenditure.” *Id.* § 1-45-107.5(4)(b). Additional disclosures are required based on whether the donor is a natural person or an entity. *See id.*

(b) Threshold for Donor Disclosure. Disclosure of a donor’s name and address is required for any donor who gives earmarked donations of more than \$250 in a calendar year. *Id.*

V. DISCLAIMER REQUIREMENTS FOR INDEPENDENT EXPENDITURES AND ELECTIONEERING COMMUNICATIONS

(a) Form of Disclaimer. Disclaimers are required for independent expenditures but not for electioneering communications. *See id.* § 1-45-107.5(5). For broadcast communications, the disclaimer must satisfy the size, duration, and placement requirements promulgated by the FCC. *Id.* For non-broadcast communications, the disclaimer must include “a clear and conspicuous disclaimer that is clearly readable, printed in text that is no less than 15 percent of the size of the largest font used in the communication, or at least eight-point font.” 8 Colo. Code of Regs 1505-6:5.

(b) Content of Disclaimer. Disclaimers on broadcast IE communications must include a statement that “The communication has been paid for by [full name of person paying for the communication]” and a statement identifying a natural person who is the registered agent if the person who paid for the IE is not a natural person. *Id.* § 1-45-107.5(5).

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Disclaimers on non-broadcast IE communications must be clear, conspicuous, and readable and must contain (1) the name of the person making or paying for the IE; and (2) a specific statement that the communication is not authorized by any candidate. 8 Colo. Code of Regs § 1505-6:5.

(c) Types of Media Covered. Disclaimer requirements apply to “any communication that is broadcast, printed, mailed, delivered, or otherwise circulated that constitutes an independent expenditure for which the person making the independent expenditure expends in excess of \$1,000 on the communication.” Colo. Rev. Stat. § 1-45-107.5(5).

(d) Exceptions. The following are exempt from the disclaimer requirements: bumper stickers, pins, buttons, pens, and similar small items upon which the disclaimer cannot be reasonably printed. 8 Colo. Code Regs. § 1505-6:5.

VI. STATUTORY OR REGULATORY AUTHORITY FOR SUPER PACS

Colorado law provides for “independent expenditure committees,” which may accept unlimited donations (with the exception that “foreign corporations”⁷ are prohibited from expending money on IEs in connection with a Colorado election). Colo. Rev. Stat. §§ 1-45-103(11.5), -103.7(2) and (2.5), and -107.5(1).

VII. MAJOR/PRIMARY PURPOSE FOR PAC STATUS

Colorado has no major or primary purpose limitation on the definition of a political committee. *See* Colo. Const. art. XXVIII, § 2(12) (defining “political committee”); *see also* Colo. Rev. Stat. § 1-45-103(11.5) (defining “independent expenditure committee”). (Note, however, that an “issue committee” has a major purpose requirement. *See* Colo. Const. art. XXVIII, § 2(10).)

(IFS is aware, however, that Colorado’s political committee definition has been narrowed by judicial interpretation. *See, e.g., Colo. Right to Life Comm., Inc. v. Coffman*, 498 F.3d 1137 (10th Cir. 2007); *Alliance for Colo.’s Families v. Gilbert*, 172 P.3d 964 (Colo. App. 2007). *See also Colorado Ethics Watch v. Gessler*, 363 P.3d 727, 732, as modified on

⁷ A “foreign corporation” is defined as:

(a) A parent corporation or the subsidiary of a parent corporation formed under the laws of a foreign country that is functionally equivalent to a domestic corporation;

(b) A parent corporation or the subsidiary of a parent corporation in which one or more foreign persons hold a combined ownership interest that exceeds fifty percent;

(c) A parent corporation or the subsidiary of a parent corporation in which one or more foreign persons hold a majority of the positions on the corporation's board of directors; or

(d) A parent corporation or the subsidiary of a parent corporation whose United States-based operations, or whose decision-making with respect to political activities, falls under the direction or control of a foreign entity, including the government of a foreign country.

Colo. Rev. Stat. § 1-45-103(10.5).

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denial of reh'g (Feb. 27, 2014) (recognizing the “major purpose” construct but striking down the Secretary of State’s specific, objective criteria used to make this determination).)

VIII. PAC STATUS DETERMINATION AND THRESHOLDS

(a) PAC Definition. Colorado’s definitions for a “political committee” and an “independent expenditure committee” are based solely on contribution and expenditure thresholds.

A “political committee” is “any person, other than a natural person, or any group of two or more persons, including natural persons that have accepted or made contributions or expenditures in excess of \$200 to support or oppose the nomination or election of one or more candidates.” Colo. Const. art. XXVIII, § 2(12)(a).

An “independent expenditure committee” means one or more persons who make IEs exceeding \$1,000 in aggregate or who collect more than \$1,000 from one or more persons for the purpose of making an IE. Colo. Rev. Stat. § 1-45-103(11.5).

(b) Threshold for PAC Registration/Reporting. Political committees trigger registration by making expenditures of \$200 or more to support or oppose candidates, Colo. Const. art. XXVIII, § 2(12)(a), while IE committees trigger registration and reporting by either exceeding \$1,000 in IEs or collecting more than \$1,000 in contributions earmarked for IEs, Colo. Rev. Stat. § 1-45-103(11.5).

(c) Threshold for Disclosure of PAC Donors. A political committee must report the name and address of each contributor of \$20 or more. *Id.* § 1-45-108(1)(a)(I). (It is unclear over what period of time this threshold applies, but presumably it is for the reporting period.) An IE committee must report the name and address of any contributor of \$250 or more per calendar year for the purpose of making an IE. *Id.* § 1-45-107.5(4)(b)(I).

(d) Disclosure of Donors’ Employer Information on PAC Reports. A political committee must report the employer and occupation of natural persons who contribute \$100 or more. *Id.* § 1-45-108(1)(a)(II). An IE committee must report the employer and occupation of natural persons who contribute \$250 or more for the purpose of making an IE. *Id.* § 1-45-107.5(4)(b)(II).

IX. REGULATION OF “INCIDENTAL COMMITTEES”

Colorado does not appear to separately regulate “incidental committees.” However, as discussed above in Section VII, the regulation of “independent expenditure committees,” as well as the lack of a major/primary purpose standard for most PACs, arguably may be a form of “incidental committee” regulation.

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X. PRIVATE ENFORCEMENT ACTIONS

The Colorado Constitution provides for private enforcement actions, permitting “any person” who believes a violation of the law has occurred to initiate an enforcement proceeding by filing a complaint with the Secretary. Colo. Const. art. XXVIII, § 9(2)(a). The Secretary of State is required to refer every complaint to an administrative law judge for a hearing within three days of the complaint’s filing, regardless of the merits of the complaint. *Id.*

XI. COORDINATION

(a) “Content Prong.” Colorado’s coordination rules apply to “expenditures,” “spending,” “independent expenditures,” and “electioneering communications.”

Specifically, “[e]xpenditures that are controlled by or coordinated with a candidate or candidate’s agent are deemed to be both contributions by the maker of the expenditures, and expenditures by the candidate committee.” *Id.* § 2(9). Expenditures or spending are coordinated with a candidate committee or political party if:

1. A person makes *an expenditure or engages in spending* at the request, suggestion, or direction of, in consultation with, or under the control of that candidate committee or political party; or

2. An *independent expenditure or electioneering communication* is created, produced, or distributed:

- (a) After one or more substantial discussion(s) between the candidate or political party and the person *making the expenditure or engaging in the spending*,

- (1) In which the person *making the expenditure or engaging in the spending* received non-public information about the candidate or political party’s plans, projects, activities, or needs; and

- (2) The information is material to the creation, production, or dissemination of *an independent expenditure or electioneering communication . . .*

8 Colo. Code of Regs § 1505-6:21.1 (emphasis added).

As discussed above in Section II, Colorado has very vague and broad “expenditure” and “independent expenditure” definitions.

(b) Former Employee/Vendor “Conduct Prong.” Colorado’s coordination rules prohibit an IE created, produced, or distributed by a common consultant who provided services to both parties during the “election cycle.” *See id.* § 1505-6:21.1.2(b). An “election cycle” begins 31 days following the election for a particular office and ends 30 days following the next general or special election to that office. Colo. Const. art. XXVIII, § 2. Thus, this

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cooling-off period appears to generally extend beyond 120 days of having worked for a candidate or political party.

(c) Public Information Exemption. Colorado’s coordination rules do not expressly exempt information obtained from publicly available sources. *See* 8 Colo. Code of Regs § 1505-6:21.1. However, the coordination rules generally only regulate coordination involving “non-public information” about a candidate’s or party’s plans, projects, activities, or needs, although “non-public information” is *not* required if the spending is done at “the request, suggestion, or direction of, in consultation with, or under the control of that candidate committee or political party.” *Compare id.* § 1505-6:21.1.2 with *id.* § 1505-6:21.1.1.

XII. LOBBYING

(a) General Lobbyist/Lobbyist Principal Donor Disclosure. Colorado does not appear to require donor disclosure on either lobbying registration or reports. *See* Colo. Rev. Stat. §§ 24-6-301, -302, -303.

(b) Grassroots Lobbying. Grassroots lobbying is regulated.

Lobbying is defined, in relevant part, as “communicating directly, or *soliciting others to communicate*, with a covered official for the purpose of aiding in or influencing” official action. *Id.* § 24-6-301(3.5)(a) (emphasis added).

(c) Forms of Grassroots Lobbying Communications Regulated. Colorado does not specify which forms of grassroots activity are covered. Thus, any communication that contains a “call to action” (*i.e.*, solicits others to communicate with covered officials) could be regulated as grassroots lobbying activity. *See id.*

(Note, however, that grassroots communications that involve minimal resources and are “not part of a larger pattern of grassroots communications” will not trigger registration and reporting. Colo. Sec’y of State, Final Agency Decision of Dec. 23, 2015.)

(d) Grassroots Lobbying Reference to Specific Legislation. Colorado’s definition of lobbying (which covers grassroots lobbying) does not require reference to specific legislation. Colo. Rev. Stat. § 24-6-301(3.5)(a).

(e) Grassroots Lobbying Registration and Reporting Thresholds. There are no monetary or other thresholds for lobbyist registration in Colorado. Individual lobbyists must register prior to conducting any lobbying activity. *Id.* §§ 24-6-303, -308(m).

(Note that the statute and regulations are not clear as to who should register if an organization conducts grassroots activities. The Secretary of State’s office has previously advised IFS that the grassroots lobbying expenses may generally be reported through a single registered lobbyist for the organization.)

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(f) Donor Disclosure for Grassroots Lobbying. Colorado does not appear to require donor disclosure for grassroots lobbying activities. *See id.* §§ 24-6-301, -302, -303.

(g) Earmarked Donor Disclosure for Grassroots Lobbying. N/A

(h) Donor Disclosure Threshold for Grassroots Lobbying (If Not Limited to Earmarked Donors). N/A

(i) Threshold Indexing (If Grassroots Lobbying Is Regulated). Colorado does not have a dollar threshold for registration; an individual must register as a lobbyist prior to conducting lobbying activity. *See id.* §§ 24-6-303, 308(m).

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I. FALSE POLITICAL SPEECH LAW

Connecticut does not appear to have a false political speech law.

II. DEFINITION OF EXPENDITURE/EXPRESS ADVOCACY

Connecticut's "expenditure" definition is very vague and broad and also includes electioneering-communication-like speech.

Connecticut defines an "expenditure" generally as any payment or anything of value "when made *to promote the success or defeat* of any candidate seeking the nomination for election, or election, of any person *or for the purpose of aiding or promoting the success or defeat* of any referendum question or the success or defeat of any political party." Conn. Gen. Stat. § 9-601b(a)(1).

In addition, an "expenditure" includes:

Any communication that (A) *refers to one or more clearly identified candidates*, and (B) is broadcast by radio, television, other than on a public access channel, or by satellite communication or via the Internet, or as a paid-for telephone communication, or appears in a newspaper, magazine or on a billboard, or is sent by mail,

unless such a communication is:

made (A) prior to the ninety-day period preceding the date of a primary or an election at which the clearly identified candidate or candidates are seeking nomination to public office or position [and] is made for the purpose of influencing any legislative or administrative action, as defined in [Conn. Gen. Stat. § 1-91], or executive action, or (B) during a legislative session for the purpose of influencing legislative action.

Id. § 9-601b(a)(2) and (b)(7).

An "independent expenditure" means "an expenditure . . . that is made without the consent, coordination, or consultation of a candidate or agent of the candidate, candidate committee, political committee or party committee." *Id.* 9-601c(a).

III. ELECTIONEERING COMMUNICATIONS

(a) Regulation of ECs. Connecticut regulates "electioneering communications" (as "expenditures"). *Id.* § 9-601b(a)(2) and (b)(7).

(b) What Content Triggers Regulation as an Electioneering Communication. A communication is regulated if it "refers to one or more clearly identified candidates," unless it is:

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made (A) prior to the ninety-day period preceding the date of a primary or an election at which the clearly identified candidate or candidates are seeking nomination to public office or position [and] *is made for the purpose of influencing any legislative or administrative action*, as defined in [Conn. Gen. Stat. § 1-91], or executive action, or (B) during a legislative session *for the purpose of influencing legislative action*.

Id. (emphasis added).

(c) Types of Media Covered. Connecticut’s EC/expenditure law covers “communications broadcast by radio, television, other than on a public access channel, or by satellite communication or via the Internet, or as a paid-for telephone communication, or appears in a newspaper, magazine or on a billboard, or is sent by mail.” *Id.*

(d) Reporting Threshold. The threshold for reporting an EC/IE is spending more than \$1,000 “during a primary campaign or a general election campaign” on such communications. *Id.* § 9-601d(b).⁸

This threshold is not indexed for inflation. *See id.*

(e) Time Windows. The time window is communications distributed within 90 days before a primary or general election and that is not during a legislative session. *Id.* § 9-601b(b)(7).

(f) Jurisdictional Limitation. There is no jurisdictional limitation. *See id.* § 9-601b(a)(2) and (b)(7).

(g) Donor Disclosure. General donor disclosure appears to be required, subject to certain exceptions (notably, “[d]ues, fees or assessments *that are transferred between affiliated entities and* paid by individuals on a regular, periodic basis in accordance with a per-individual calculation that is made on a regular basis” are exempt from disclosure, although

⁸ A “primary campaign” is defined as:

the period beginning on the day following the close of (A) a convention held pursuant to section 9-382 for the purpose of endorsing a candidate for nomination to the office of Governor, Lieutenant Governor, Attorney General, State Comptroller, State Treasurer or Secretary of the State or the district office of state senator or state representative, or (B) a caucus, convention or town committee meeting held pursuant to section 9-390 for the purpose of endorsing a candidate for the municipal office of state senator or state representative, whichever is applicable, and ending on the day of a primary held for the purpose of nominating a candidate for such office.

Id. § 9-700(11).

A “general election campaign” is defined as:

(A) in the case of a candidate nominated at a primary, the period beginning on the day following the primary and ending on the date the treasurer files the final statement for such campaign pursuant to section 9-608, or (B) in the case of a candidate nominated without a primary, the period beginning on the day following the day on which the candidate is nominated and ending on the date the treasurer files the final statement for such campaign pursuant to section 9-608.

Id. § 9-700(7).

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it is unclear why this exemption applies only if such funds are “transferred between affiliated entities”). *See id.* §§ 9-601d(f) (donor disclosure requirement) and -601(29) (defining “covered transfer”) (emphasis added).⁹

In addition, donors are not required to be disclosed:

- “if the person making the donation, transfer or payment prohibited the use of such donation, transfer or payment for an independent expenditure or a covered transfer and the recipient of the donation, transfer or payment agreed to follow the prohibition and deposited the donation, transfer or payment in an account which is segregated from any account used to make independent expenditures or covered transfers,” *id.* § 9-601(29)(B)(ii); or
- If the sponsor of the EC/IE establishes a segregated account and funds the communication using such an account, in which case only donors to that account are required to be disclosed. *Id.* § 9-601d(g).

(h) 501(c)(3) Exemption. “A lawful communication” made by a 501(c)(3) entity is exempt from the definition of an “expenditure.” *Id.* § 9-601b(b)(13).

(i) Media Exemption. A media exemption exists for:

Any news story, commentary or editorial distributed through the facilities of any broadcasting station, newspaper, magazine or other periodical, unless such facilities are owned or controlled by any political party, committee or candidate.

Id. § 9-601b(b)(5).

(j) Other Exemptions. Other relevant exemptions apply for:

(2) A communication made by any corporation, organization or association solely to its members, owners, stockholders, executive or administrative personnel, or their families;

(3) Nonpartisan voter registration and get-out-the-vote campaigns by any corporation, organization or association aimed at its members, owners, stockholders, executive or administrative personnel, or their families . . .

(9) A commercial advertisement that refers to an owner, director or officer of a business entity who is also a candidate and that had previously been broadcast or appeared when the owner, director or officer was not a candidate
...

⁹ An argument could be made that only “covered transfer[s]” that are earmarked “for an office that a candidate” that is the subject of the IE/EC should be disclosed. *See id.* § 9-601d(f)(1). However, that is likely not how the donor disclosure requirement is interpreted in Connecticut, since most of the other exceptions to donor disclosure would not make much sense if donor disclosure were only limited to earmarked funds in the first instance. In addition, note that it appears that donor disclosure is required only if an IE/EC is made within 180 days prior to a primary or general election in which the candidate that is the subject of the IE/EC is running. *See id.*

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(15) An expense or expenses incurred by a human being acting alone in an amount that is two hundred dollars or less, in the aggregate, that benefits a candidate for a single election.

Id. § 9-601b(b).

IV. DONOR DISCLOSURE FOR INDEPENDENT EXPENDITURES MADE BY ENTITIES THAT ARE NOT PACS

(a) **Donor Disclosure.** General donor disclosure appears to be required, subject to certain exceptions (notably, “[d]ues, fees or assessments *that are transferred between affiliated entities and* paid by individuals on a regular, periodic basis in accordance with a per-individual calculation that is made on a regular basis” are exempt from disclosure, although it is unclear why this exemption applies only if such funds are “transferred between affiliated entities”). *See id.* §§ 9-601d(f) (donor disclosure requirement) and -601(29) (defining “covered transfer”) (emphasis added).¹⁰

In addition, donors are not required to be disclosed:

- “if the person making the donation, transfer or payment prohibited the use of such donation, transfer or payment for an independent expenditure or a covered transfer and the recipient of the donation, transfer or payment agreed to follow the prohibition and deposited the donation, transfer or payment in an account which is segregated from any account used to make independent expenditures or covered transfers,” *id.* § 9-601(29)(B)(ii); or
- If the sponsor of the IE establishes a segregated account and funds the communication using such an account, in which case only donors to that account are required to be disclosed. *Id.* § 9-601d(g).

(b) **Threshold for Donor Disclosure.** For donors subject to disclosure, the threshold is making “covered transfers” totaling \$5,000 or more during the 12-month period prior to the primary or general election involving the candidate that is the subject of the IE. *Id.* § 9-601d(f)(1).

V. DISCLAIMER REQUIREMENTS FOR INDEPENDENT EXPENDITURES AND ELECTIONEERING COMMUNICATIONS

(a) **Form of Disclaimer.** For video ads (including those that are disseminated on the Internet), the disclaimer must be spoken and also appear on the screen for at least four seconds. *Id.* § 9-621(h)(2).

¹⁰ An argument could be made that only “covered transfer[s]” that are earmarked “for an office that a candidate” that is the subject of the IE should be disclosed. *See id.* § 9-601d(f)(1). However, that is likely not how the donor disclosure requirement is interpreted in Connecticut, since most of the other exceptions to donor disclosure would not make much sense if donor disclosure were only limited to earmarked funds in the first instance. In addition, note that it appears that donor disclosure is required only if an IE/EC is made within 180 days prior to a primary or general election in which the candidate that is the subject of the IE/EC is running. *See id.*

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(b) Content of Disclaimer. In general, IEs that are “written,” “typed,” or “printed” must state:

“Paid for by” and the name of such person and the following statement: “This message was made independent of any candidate or political party.” In the case of a person making or incurring such an independent expenditure during the ninety-day period immediately prior to the primary or election for which the independent expenditure is made, such communication shall also bear upon its face the names of the five persons who made the five largest aggregate covered transfers to the person making such communication during the twelve-month period immediately prior to such primary or election, as applicable. The communication shall also state that additional information about the person making such communication may be found on the State Elections Enforcement Commission’s Internet web site.

Id. § 9-621(h)(1).¹¹

IEs that are “written,” “typed,” or “printed” regarding referenda must state: “Paid for by [name of sponsor, followed by the name of its CEO or equivalent officer]. This message was made independent [sic] of any candidate or political party.” *Id.* § 9-621(c). In addition, the disclaimer must state that additional information about the sponsor of the communication may be found on the SEEC’s web site. *Id.* (Disclosure of the top-five providers of covered transfers, as required for the general IE disclaimers, also appears to be required, although this point is not entirely clear.) *See* §§ 9-621(h)(1) and -601b(a)(1).

Video IEs must include an audio message and a written statement:

“This message was paid for by (person making the communication) and made independent of any candidate or political party.” In the case of a person making or incurring such an independent expenditure during the ninety-day period immediately prior to the primary or election for which the independent expenditure is made, such communication shall also list the names of the five persons who made the five largest aggregate covered transfers to the person making such communication during the twelve-month period immediately prior to such primary or election, as applicable. The communication shall also state that additional information about the person making such communication may be found on the State Elections Enforcement Commission’s Internet web site.

Id. § 9-621(h)(2).¹²

Audio IEs must feature a “personal audio statement” by the sponsor’s “agent” stating:

(A) identifying the person paying for the expenditure, and (B) indicating that the message was made independent of any candidate or political party, using the following form: “I am (name of the person’s agent), (title), of (the

¹¹ Sources of “covered transfers” that total less than \$5,000 during the 12-month period prior to the primary or general election for which an EC/IE is made are not required to be included in the disclaimer. *Id.* § 9-621(l).

¹² Sources of “covered transfers” that total less than \$5,000 during the 12-month period prior to the primary or general election for which an EC/IE is made are not required to be included in the disclaimer. *Id.* § 9-621(l).

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person). This message was made independent of any candidate or political party.”. In the case of a person making or incurring such an independent expenditure during the ninety-day period immediately prior to the primary or election for which the independent expenditure is made, such communication shall state the names of the five persons who made the five largest aggregate covered transfers to the person making such communication during the twelve-month period immediately prior to such primary or election, as applicable. The communication shall also state that additional information about the person making such communication may be found on the State Elections Enforcement Commission’s Internet web site.

Id. § 9-621(h)(3).¹³

Telephone IEs must:

identif[y] the person making the expenditure and during the ninety-day period immediately prior to the primary or election for which the independent expenditure is made, such communication shall state the names of the five persons who made the five largest aggregate covered transfers to the person making such communication during the twelve-month period immediately prior to such primary or election, as applicable. The communication shall also state that additional information about the person making such communication may be found on the State Elections Enforcement Commission’s Internet web site.

Id. § 9-621(h)(4).¹⁴

(c) Types of Media Covered. The disclaimer requirements apply to all forms of “written,” “typed,” “printed,” video, audio, and telephone communications. *See id.* § 9-621(c) and (h).

(d) Exceptions. Apparently for the disclaimer requirements for IEs related to referenda only, a disclaimer is not required for:

any editorial, news story, or commentary published in any newspaper, magazine or journal on its own behalf and upon its own responsibility and for which it does not charge or receive any compensation whatsoever, (2) any banner, (3) political paraphernalia including pins, buttons, badges, emblems, hats, bumper stickers or other similar materials, or (4) signs with a surface area of not more than thirty-two square feet.

Id. § 9-621(d).

¹³ Sources of “covered transfers” that total less than \$5,000 during the 12-month period prior to the primary or general election for which an EC/IE is made are not required to be included in the disclaimer. *Id.* § 9-621(l).

¹⁴ Sources of “covered transfers” that total less than \$5,000 during the 12-month period prior to the primary or general election for which an EC/IE is made are not required to be included in the disclaimer. *Id.* § 9-621(l).

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In addition:

any disclaimer required to be on the face of any Internet text advertisement communication (1) that appears based on the result of a search conducted by a user of an Internet search engine, and (2) the text of which contains two hundred or fewer characters, shall not be required to list the names of the five persons who made the top five largest aggregate covered transfers to the maker of such communication, as otherwise required by this section, if such disclaimer (A) includes a link to an Internet web site that discloses the names of such five persons, and (B) otherwise contains any statement required pursuant to the provisions of this section.

Id. § 9-621(m).

VI. **STATUTORY OR REGULATORY AUTHORITY FOR SUPER PACS**

Connecticut's statute does not appear to provide for super PACs.

VII. **MAJOR/PRIMARY PURPOSE FOR PAC STATUS**

Connecticut's PAC definition does not have any major or primary purpose limitation. *See id.* § 9-601(1) and (3).

VIII. **PAC STATUS DETERMINATION AND THRESHOLDS**

(a) PAC Definition. A "committee" is defined as:

a party committee, political committee or a candidate committee organized, as the case may be, for a single primary, election or referendum, or for ongoing political activities, *to aid or promote the success or defeat* of any political party, any one or more candidates for public office or the position of town committee member or any referendum question.

§ 9-601(1) (emphasis added).

(A "political committee" is defined, in relevant part, as "(A) a committee organized by a business entity or organization, (B) persons other than individuals, or two or more individuals organized or acting jointly conducting their activities in or outside the state . . ." *Id.* § 9-601(3).)

(IFS is aware that the State Elections Enforcement Commission has adopted a narrowing interpretation and has concluded that an organization that only makes independent expenditures "from its existing treasury," and that does not accept any contributions "earmarked" for Connecticut political activity, is not required to register and report as a political committee and is only required to file the independent expenditure reports discussed above. *See* SEEC Decl. Rul. 2013-02 at 13-14 and 16. However, if an organization accepts earmarked contributions (whether alone or in conjunction with other non-earmarked revenues) and makes expenditures in Connecticut, then it must register and

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report as a political committee in the state if it receives earmarked political contributions totaling more than \$1,000 or if it makes political expenditures totaling more than \$1,000. *See id.* at 14, 16, and 21; Conn. Gen. Stat. § 9-602(a).)

(b) Threshold for PAC Registration/Reporting. Political committees must register prior to receiving funds or making expenditures totaling more than \$1,000 (apparently over any period of time). *See* Conn. Gen. Stat. § 9-602.

This threshold is not adjusted for inflation. *See id.*

(Technically, it appears that the costs of IEs do not apply toward the general \$1,000 threshold. *See id.* It is unclear what the threshold is for PAC status based on making IEs.)

PACs focused “solely” on referenda are required to register if the group receives or expends more than a total of \$1,000 “for the entire campaign.” *Id.* § 9-605(d). (The term “campaign” does not appear to be defined.)

(c) Threshold for Disclosure of PAC Donors. There is no threshold for PAC donor disclosure. *See id.* § 9-608(c)(1)(A).

(d) Disclosure of Donors’ Employer Information on PAC Reports. Employer information is required for donors who have given more than a total of \$1,000. *Id.* § 9-608(c)(1)(H). (It is unclear over what period of time this threshold applies.)

IX. REGULATION OF “INCIDENTAL COMMITTEES”

Connecticut does not separately regulate “incidental committees.” However, as discussed above in Section VII, the lack of a major/primary purpose standard for PACs arguably may be a form of “incidental committee” regulation.

X. PRIVATE ENFORCEMENT ACTIONS

Connecticut does not appear to provide for private enforcement actions for violations of its campaign finance laws, and the State Elections Enforcement Commission generally has exclusive enforcement authority. *See id.* § 9-7b.

XI. COORDINATION

(a) “Content Prong.” Connecticut’s coordination law applies to “expenditures.” *See id.* § 9-601c(a). As discussed above in Section II, Connecticut’s “expenditure” definition is very vague and broad and includes EC-type content. *See id.* § 9-601b(a)(1)(2) and (b)(7).

(b) Former Employee/Vendor “Conduct Prong.” Connecticut’s coordination law applies to the use of certain vendors and employees of a candidate or political party committee within “the same election cycle.” *Id.* § 9-601c(b)(4). The term “election cycle” does not appear to be defined.

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(The SEEC appears to use this term to mean the time between a general election for a particular office and the next general election for the same office. *See, e.g.*, SEEC Adv. Op. No. 2008-02.)

(c) **Public Information Exemption.** Connecticut’s coordination law does not expressly exempt information obtained from publicly available sources. *See* Conn. Gen. Stat. § 9-601c.

XII. LOBBYING

(a) **General Lobbyist/Lobbyist Principal Donor Disclosure.** For most registrants, no donor disclosure is required. Donor disclosure is only required where a lobbyist registrant is “an association or group formed primarily for lobbying.” Conn. Gen. Stat. § 1-95(a)(3). Such a registrant “must disclose the name and address of any person contributing \$3,000 or more to its lobbying activities for the calendar year.” *Id.*

(b) **Grassroots Lobbying.** Connecticut regulates grassroots lobbying. “Lobbying” is defined as “communicating directly or *soliciting others to communicate* with any official or his staff in the legislative or executive branch of government or in a quasi-public agency, for the purpose of influencing any legislative or administrative action.” *Id.* § 1-91(11) (emphasis added).

(c) **Forms of Grassroots Lobbying Communications Regulated.** Communications that solicit others to communicate with officials or staff members are covered under the lobbying disclosure law, without regard to the particular method of communication. A lobbying “expenditure” includes “any solicitation or solicitations, costing [\$50] or more in the aggregate for any calendar year, of other persons to communicate with a public official or state employee for the purpose of influencing any legislative or administrative act.” *Id.* § 1-91(6).

(d) **Grassroots Lobbying Reference to Specific Legislation.** Connecticut’s lobbying definition does not require express reference to specific legislation in order for the communication to be covered. *See id.* § 1-91(11).

(e) **Grassroots Lobbying Registration and Reporting Thresholds.** Lobbyist registration and reporting requirements are triggered by any person, including a corporation or other organization, “who in lobbying and in furtherance of lobbying” is compensated, is reimbursed, or expends \$3,000 or more in a calendar year. *Id.* § 1-91(12).

(f) **Donor Disclosure for Grassroots Lobbying.** N/A

(g) **Earmarked Donor Disclosure for Grassroots Lobbying.** N/A

(h) **Donor Disclosure Threshold for Grassroots Lobbying (If Not Limited to Earmarked Donors).** N/A

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(i) Threshold Indexing (If Grassroots Lobbying Is Regulated). The lobbyist registration threshold is not indexed for inflation. *See id.*

DELAWARE

I. FALSE POLITICAL SPEECH LAW

Delaware does not appear to have a false political speech law.

II. DEFINITION OF EXPENDITURE/EXPRESS ADVOCACY

An “independent expenditure” is “any expenditure made by any individual or other person (other than a candidate committee or a political party) expressly advocating the election or defeat of a clearly identified candidate, which is made without cooperation or consultation with any candidate, or any 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 committee or agent of such candidate.” Del. Code tit. 15, § 8002(13).

Delaware statutes and regulations do not further define “express advocacy.”

An “expenditure” is defined as “any payment made or debt incurred, by or on behalf of a candidate or political committee, or *to assist in the election of any candidate or in connection with any election campaign.*” *Id.* § 8002(12) (emphasis added).

(The Attorney General has appeared to adopt the strict *Buckley* formulation for an “expenditure.” *See* Del. Op. Att’y Gen. 00-IB17 (Oct. 25, 2000). But this was before *McConnell* and *WRTL*.)

III. ELECTIONEERING COMMUNICATIONS

(a) Regulation of ECs. Delaware regulates electioneering communications. Del. Code tit. 15, § 8002(10).

(b) What Content Triggers Regulation as an Electioneering Communication. An electioneering communication is one that “[r]efers to a clearly identified candidate.” *Id.*

(c) Types of Media Covered. The law covers communications distributed by “television, radio, newspaper or other periodical, sign, Internet, mail or telephone.” *Id.* § 8002(7), (10).

(d) Reporting Threshold. Reports are required for persons who spend more than \$500 during an election period on “third-party advertisements” (which include independent expenditures and electioneering communications). *Id.* §§ 8002(27), 8031.

This threshold is not indexed for inflation. *See id.*

(e) Time Windows. The time window for electioneering communications is 30 days before a primary and 60 days before a general election. *Id.* § 8002(10). (+)

(f) Jurisdictional Limitation. The definition of electioneering communication covers only those communications made to or distributed “to an audience that includes members of the electorate for the office sought by such candidate.” *Id.* (+)

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(g) Donor Disclosure. The person making the electioneering communication must disclose the identity of any donor who made contributions to the person during the election period in an aggregate amount in excess of \$100. *Id.* § 8031(a)(3).

There does not appear to be any allowance under which donors may avoid disclosure if they prohibit their donations from being used to fund ECs, or whereby disclosure may be limited to donors to a segregated account that is used to fund ECs.

(h) 501(c)(3) Exemption. There does not appear to be an exemption for 501(c)(3) organizations.

(i) Media Exemption. Exempted from the definition of electioneering communication is “[a] communication appearing in a news article, editorial, opinion, or commentary, provided that such communication is not distributed via any communications media owned or controlled by any candidate, political committee or the person purchasing such communication.” *Id.* § 8002(10).

(j) Other Exemptions. Delaware also excludes communications distributed solely to the members, shareholders, or employees of an organization or institution as well as communications made in any candidate debate or forum or which solely promote a debate or forum and is made by or on behalf of the person sponsoring a debate or forum. *Id.*

IV. DONOR DISCLOSURE FOR INDEPENDENT EXPENDITURES MADE BY ENTITIES THAT ARE NOT PACS

(a) Donor Disclosure. A person, other than a political committee, candidate committee, or political party, who makes expenditures for third-party advertisements (which include independent expenditures) in the aggregate amount in excess of \$500 during an election period must file reports with the Commissioner of Elections. The report must disclose “each person who has made contributions to such person during the election period in an aggregate amount or value in excess of \$100.” *Id.* § 8031.

(b) Threshold for Donor Disclosure. Disclosure is required for donors who have given a total of more than \$100 during the “election period.” *Id.*

There does not appear to be any allowance under which donors may avoid disclosure if they prohibit their donations from being used to fund IEs, or whereby disclosure may be limited to donors to a segregated account that is used to fund IEs.

V. DISCLAIMER REQUIREMENTS FOR INDEPENDENT EXPENDITURES AND ELECTIONEERING COMMUNICATIONS

(a) Form of Disclaimer. Written disclaimers are required for most media (except for radio, which must be spoken), and spoken disclaimers are required in addition to written disclaimers for television ads. 15 Del. Admin. Code § 7.

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(b) Content of Disclaimer. A third-party advertisement having a fair market value of \$500 or more requires the following disclaimer: “Paid for by [name of political committee or other person paying for such third-party advertisement]. Learn more about [political committee or other person paying for such third-party advertisement] at elections.delaware.gov.” *Id.* § 7.2.

(c) Types of Media Covered. The disclaimer requirements are not limited to any particular types of media. *See id.* § 7; *see also* 15 Del. Code § 8002 (27) (defining “third-party advertisement”), (10)a (defining “electioneering communication”), and (13) (defining “independent expenditure”).

(d) Exceptions. Printed items with a surface of less than 9 square inches are exempt from the disclaimer requirements. *See* Del. Code tit. 15, § 8031(b); 15 Del. Admin. Code §§ 7.1 and 7.2.

VI. STATUTORY OR REGULATORY AUTHORITY FOR SUPER PACS

There is no express statutory or regulatory authority for super PACs.

VII. MAJOR/PRIMARY PURPOSE FOR PAC STATUS

Delaware statutes and regulations do not provide for a major or primary purpose test for PAC status. *See* Del. Code tit. 15, § 8002(19) (definition of “political committee”).

VIII. PAC STATUS DETERMINATION AND THRESHOLDS

(a) PAC Definition. The definition of “political committee” is an organization that “accepts contributions from or makes expenditures to any candidate . . . not including independent expenditures.” *See id.*

(As discussed above in Section II, Delaware has a very vague and broad “expenditure” definition. *See id.* § 8002(12).)

(b) Threshold for PAC Registration/Reporting. The threshold is accepting contributions or making expenditures totaling more than \$500 per “election period.” *Id.* § 8002(19). An “election period” for PACs is defined as “the period beginning on the January 1 immediately after a general election, and ending on the December 31 immediately after the next general election.” *Id.* § 8002(11)(b).

This threshold is not adjusted for inflation. *See id.*

(c) Threshold for Disclosure of PAC Donors. A PAC must disclose donors who contribute in excess of \$100 during the “election period.” *Id.* § 8030(d)(2). An “election period” for PACs is defined as “the period beginning on the January 1 immediately after a general election, and ending on the December 31 immediately after the next general election.” *Id.* § 8002(11)(b).

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(d) **Disclosure of Donors' Employer Information on PAC Reports.** Disclosure of donors' employer information is not required.

IX. REGULATION OF "INCIDENTAL COMMITTEES"

Delaware does not appear to regulate incidental committees.

X. PRIVATE ENFORCEMENT ACTIONS

Delaware allows private parties to pursue civil remedies in the Court of Chancery for violations of Delaware's campaign finance laws. *Id.* § 8042.

XI. COORDINATION

(a) **"Content Prong."** Whether an expenditure is coordinated is relevant only when "express advocacy" is at issue. *Id.* § 8002(13). As discussed above in Section II, Delaware does not define "express advocacy" in its statute or regulations.

(b) **Former Employee/Vendor "Conduct Prong."** An expenditure is coordinated if "the person making the expenditure (including any officer, director, employee or agent of such person) has advised or counseled the candidate or the candidate's agents on the candidate's plans, projects or needs relating to the candidate's pursuit of nomination or election, *in the same election period*, including any advice relating to the candidate's decision to seek office." *Id.* (emphasis added). For persons who/that are not PACs, "the election period shall begin and end at the same time as that of the candidate identified in such advertisement," which in turn means:

1. For a candidate for reelection to an office to which the candidate was elected in the most recent election held therefor, the period beginning on January 1 immediately after the most recent such election, and ending on the December 31 immediately after the general election at which the candidate seeks reelection to the office.
2. For a candidate for reelection to an office which the candidate attained since the last election held therefor (whether the candidate attained the office by succession, appointment or otherwise), the period beginning on the day the candidate succeeded to or was appointed to the office, and ending on the December 31 immediately after the general election at which the candidate seeks reelection to the office.
3. For a candidate for election to an office which the candidate does not hold, the period beginning on the day on which the candidate first receives any contribution from any person (other than from the candidate or from the candidate's spouse) in support of that candidate's candidacy for the office, and ending on the December 31 immediately after the general election at which the candidate seeks election to the office.

Id. § 8002(11)(d) and (a).

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(c) **Public Information Exemption.** Delaware does not appear to have a public information exemption. *Id.* § 8002(13).

XII. LOBBYING

(a) **General Lobbyist/Lobbyist Principal Donor Disclosure.** Donor disclosure is not required for lobbyist registration and reporting. *See* Del. Code tit. 29, §§ 5832, 5835 (lobbyist registration and reporting).

(b) **Grassroots Lobbying.** Delaware does not regulate grassroots lobbying. It regulates “any individual who acts to promote, advocate, influence or oppose any matter pending before the General Assembly by direct communication with the General Assembly or any matter pending before a state agency by direct communication with that state agency.” *Id.* § 5831(a)(5) (defining “lobbyist”).

(c) **Forms of Grassroots Lobbying Communications Regulated.** N/A

(d) **Grassroots Lobbying Reference to Specific Legislation.** N/A

(e) **Grassroots Lobbying Registration and Reporting Thresholds.** N/A

(f) **Donor Disclosure for Grassroots Lobbying.** N/A

(g) **Earmarked Donor Disclosure for Grassroots Lobbying.** N/A

(h) **Donor Disclosure Threshold for Grassroots Lobbying (If Not Limited to Earmarked Donors).** N/A

(i) **Threshold Indexing (If Grassroots Lobbying Is Regulated).** N/A

DISTRICT OF COLUMBIA

I. FALSE POLITICAL SPEECH LAW

The District does not appear to have a false political speech law.

II. DEFINITION OF EXPENDITURE/EXPRESS ADVOCACY

The District has very broad definitions of an “expenditure” and “independent expenditure.”

An “expenditure” is defined, in relevant part, as:

A purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value, made for the purpose of financing, directly or indirectly:

(I) The nomination or election of a candidate;

(II) Any operations of a political committee or political action committee;

D.C. Mun. Code § 1-1161.01(21)(A).

An “independent expenditure” is defined as:

an expenditure that is:

(A) Made for the principal purpose of promoting or opposing:

(i) The nomination or election of a candidate;

(ii) A political party; or

(iii) Any initiative, referendum, or recall; and

(B) Not controlled by or coordinated with:

(i) Any public official or candidate; or

(ii) Any person acting on behalf of a public official or candidate;

Id. § 1-1161.01(28A).

The phrase “promoting or opposing” does not appear to be further defined.

(IFS is aware that the Office of Campaign Finance also omits the “principal” qualifier from its interpretation of the definition of an “independent expenditure.” *See* D.C. Of. Of Campaign Fin., Campaign Finance Guide 2015 at 16, *available at* http://ocf.dc.gov/sites/default/files/dc/sites/ocf/publication/attachments/DCOCF_CampaignFinanceGuide.pdf.)

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III. ELECTIONEERING COMMUNICATIONS

(a) **Regulation of ECs.** The District’s campaign finance disclaimer requirement appears to apply to certain communications that refer to candidates.

Specifically, the disclaimer requirement applies to communications “*with reference to or intended for the support or defeat of a candidate or group of candidates for nomination or election to any public office, or for the support or defeat of any initiative, referendum, or recall measure.*” D.C. Mun. Code § 1-1163.15(a).

(b) **What Content Triggers Regulation as an Electioneering Communication.** Communications “with reference to or intended for the support or defeat of a candidate or group of candidates for nomination or election to any public office, or for the support or defeat of any initiative, referendum, or recall measure” trigger disclaimer requirements. *Id.*

(c) **Types of Media Covered.** The disclaimer requirement applies to “[a]ll newspaper or magazine advertising, posters, circulars, billboards, handbills, bumper stickers, sample ballots, initiative, referendum, or recall petitions, and other printed matter.” *Id.*

“[A]dvertisement[s] transmitted electronically by satellite, radio, cable, internet, or mobile communication, telephone bank-robo calls, or any other forms of electronic advertisement” also are subject to this disclaimer requirement. 3 D.C. Code of Mun. Regs. § 3018.2.

(d) **Reporting Threshold.** No reporting is required unless the communication meets the definition of an “independent expenditure” discussed above in Section II.

(e) **Time Windows.** There are no apparent time windows for the disclaimer requirement. *See* D.C. Mun. Code § 1-1163.15(a); 3 D.C. Code of Mun. Regs. § 3018.2.

(f) **Jurisdictional Limitation.** There is no jurisdictional limitation for the disclaimer requirement. *See id.*

(g) **Donor Disclosure.** The disclaimer requirement does not entail donor disclosure. *See id.*

(h) **501(c)(3) Exemption.** There is no specific 501(c)(3) exemption for this disclaimer requirement.

(i) **Media Exemption.** There is no specific media exemption for this disclaimer requirement.

(j) **Other Exemptions.** Other exemptions apply for:

- (a) Pens, pencils, and erasers;
- (b) Buttons;
- (c) Balloons;
- (d) Hats;

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- (e) Noise makers;
- (f) Key rings;
- (g) Magnets;
- (h) Business cards; and
- (i) Name tags.

3 D.C. Code of Mun. Regs. § 3018.5.

IV. **DONOR DISCLOSURE FOR INDEPENDENT EXPENDITURES MADE BY ENTITIES THAT ARE NOT PACS**

Donor disclosure does not appear to be required on IE reports by entities that are not PACs. *See* D.C. Mun. Code § 1-1163.13(b)(3); 3 D.C. Code of Mun. Regs. § 3008.17. (*See also* D.C. Of. of Campaign Fin. Form 16 at unnumbered 35-36.)

V. **DISCLAIMER REQUIREMENTS FOR INDEPENDENT EXPENDITURES AND ELECTIONEERING COMMUNICATIONS**

(a) **Form of Disclaimer.** There is no particular form specified for the disclaimers required for communications “with reference to or intended for the support or defeat of a candidate or group of candidates for nomination or election to any public office, or for the support or defeat of any initiative, referendum, or recall measure.” *See* D.C. Mun. Code § 1-1163.15 and 3 D.C. Code of Mun. Regs. § 3018.

(b) **Content of Disclaimer.** The disclaimer must state “PAID FOR BY” followed by the name and address of the sponsor and the name of the sponsor’s treasurer. *Id.*

(c) **Types of Media Covered.** The disclaimer requirement applies to all “newspaper or magazine advertising, mass mailings, posters, circulars, billboards, handbills, bumper stickers, sample ballots, initiative, referendum, or recall petitions, and other printed matter,” as well as any “advertisement transmitted electronically by satellite, radio, cable, internet, or mobile communication, telephone bank-robo calls, or any other forms of electronic advertisement.” 3 D.C. Code of Mun. Regs. § 3018.1, .2.

(d) **Exceptions.** Exceptions apply to “items the size of which makes the inclusion of such notice impractical,” including but “not limited to” “(a) Pens, pencils, and erasers; (b) buttons; (c) Balloons; (d) Hats; (e) Noise makers; (f) Key rings; (g) Magnets; (h) Business cards; and (i) Name tags.” *Id.* § 3018.5.

VI. **STATUTORY OR REGULATORY AUTHORITY FOR SUPER PACS**

The District provides for super PACs in the definition of an “independent expenditure committee.” *See* D.C. Mun. Code § 1-1161.01(28B); 3 D.C. Code of Mun. Regs. § 3000.14.

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VII. MAJOR/PRIMARY PURPOSE FOR PAC STATUS

An “independent expenditure committee” is defined, in relevant part, as “any committee, club, association, organization, or other group of individuals that [is] [m]ade for *the principal purpose of*” sponsoring independent expenditures. D.C. Mun. Code § 1-1161.01(28B) (emphasis added).

This “the principal purpose of” standard also appears in the definitions of “political action committee” and “political committee.” *Id.* § 1-1161.01(43A) and (44).

VIII. PAC STATUS DETERMINATION AND THRESHOLDS

(a) PAC Definition. While the District’s definition of an “independent expenditure committee” is linked specifically to sponsoring independent expenditures, the definition of a “political action committee” is determined by the “principal purpose” for which an entity is “organized” – a very vague and undefined standard.

An “independent expenditure committee” is defined, in relevant part, as “any committee, club, association, organization, or other group of individuals that [is] [m]ade for the principal purpose of” sponsoring independent expenditures. D.C. Mun. Code § 1-1161.01(28B) (emphasis added).

A “political action committee” is defined as:

any committee, club, association, organization, or other group of individuals that is:

(A) *Organized for the principal purpose of promoting or opposing:*

(i) The nomination or election of a person to public office;

(ii) A political party; or

(iii) Any initiative, referendum, or recall; and

(B) Not controlled by or coordinated with:

(i) Any public official or candidate; or

(ii) Any person acting on behalf of a public official or candidate.

Id. § 1-1161.01(43A) (emphasis added).

Under the regulations:

A political action committee shall be deemed “organized” when any proposer, individual, committee, club, association, organization, or other group of individuals formally agree, orally or in writing, or decide to promote or oppose a

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political party, the nomination or election of an individual to office, or any initiative, referendum, or recall.

3 D.C. Admin. Code of Regs. § 3000.10.

(A “political committee” appears to be the District’s form of a candidate’s campaign committee. *See id.* § 1-1161.01(44).)

(b) Threshold for PAC Registration/Reporting. There do not appear to be any monetary thresholds below which registration and reporting are not required for independent expenditure committees and political action committees. *See* D.C. Mun. Code § 1-1163.07 and .09; 3 D.C. Code of Mun. Regs. § 3000.9 and .13.

(c) Threshold for Disclosure of PAC Donors. PACs (including independent expenditure committees) are required to disclose donors who have given a total “in excess of \$50 or more” to the PAC during the calendar year. D.C. Mun. Code § 1-1163.09(c)(2).

(d) Disclosure of Donors’ Employer Information on PAC Reports. Donors’ employer information is required under the same thresholds for general donor disclosure. *Id.*

IX. REGULATION OF “INCIDENTAL COMMITTEES”

The District does not appear to regulate “incidental committees.”

X. PRIVATE ENFORCEMENT ACTIONS

Private lawsuits do not appear to be permitted to enforce the District’s campaign finance laws. The Elections Board has primary enforcement authority. *See* D.C. Mun. Code § 1-1163.02; 3 D.C. Code of Mun. Regs. Ch. 37.

XI. COORDINATION

(a) “Content Prong.” As discussed above in Section II, the District has a very broad standard for regulating independent expenditures.

An “expenditure” is defined, in relevant part, as:

A purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value, made *for the purpose of financing*, directly or indirectly:

(I) The nomination or election of a candidate;

(II) Any operations of a political committee or political action committee;

D.C. Mun. Code § 1-1161.01(21)(A) (emphasis added).

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An “independent expenditure” is defined as:

an expenditure that is:

(A) *Made for the principal purpose of promoting or opposing:*

(i) The nomination or election of a candidate;

(ii) A political party; or

(iii) Any initiative, referendum, or recall; and

(B) Not controlled by or coordinated with:

(i) Any public official or candidate; or

(ii) Any person acting on behalf of a public official or candidate;

Id. § 1-1161.01(28A) (emphasis added).

The phrase “promoting or opposing” does not appear to be further defined.

(b) Former Employee/Vendor “Conduct Prong.” The District’s definition of coordination does not appear to encompass the use or involvement of any particular personnel, including former employees or vendors. *See* D.C. Mun. Code § 1-1161.01(10B).

(c) Public Information Exemption. The District does not appear to explicitly recognize a publicly available information exemption in its coordination rules. *See id.*

XII. LOBBYING

(a) General Lobbyist/Lobbyist Principal Donor Disclosure. Donor disclosure is not required on lobbying reports. *See* D.C. Code § 1-1162.30(a); 3 D.C. Code of Mun. Regs. § 5802.2(f).

(b) Grassroots Lobbying. Grassroots lobbying does not appear to be regulated in the District.

“Lobbying” is defined as “*communicating directly with any official* in the legislative or executive branch of the District government with the purpose of influencing any legislative action or an administrative decision.” D.C. Code § 1-1161.01(32)(A) (emphasis added).

(c) Forms of Grassroots Lobbying Communications Regulated. N/A

(d) Grassroots Lobbying Reference to Specific Legislation. N/A

(e) Grassroots Lobbying Registration and Reporting Thresholds. N/A

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(f) Donor Disclosure for Grassroots Lobbying. N/A

(g) Earmarked Donor Disclosure for Grassroots Lobbying. N/A

(h) Donor Disclosure Threshold for Grassroots Lobbying (If Not Limited to Earmarked Donors). N/A

(i) Threshold Indexing (If Grassroots Lobbying Is Regulated). N/A

FLORIDA

I. FALSE POLITICAL SPEECH LAW

Florida has a false political speech law. In Florida, “[a]ny candidate who, in a primary election or other election, with actual malice makes or causes to be made any statement about an opposing candidate which is false is guilty of a violation of [the Election] code.” Fla. Stat. Ann. § 104.271(2).

II. DEFINITION OF EXPENDITURE/EXPRESS ADVOCACY

An “expenditure” is “a purchase, payment, distribution, loan, advance, transfer of funds by a campaign treasurer or deputy campaign treasurer between a primary depository and a separate interest-bearing account or certificate of deposit, or gift of money or anything of value made *for the purpose of influencing* the results of an election *or making an electioneering communication*.” *Id.* § 106.011(9) (emphasis added).

An “independent expenditure” is “an expenditure by a person for the purpose of *expressly advocating* the election or defeat of a candidate or the approval or rejection of an issue, which expenditure is not controlled by, coordinated with, or made upon consultation with, any candidate, political committee, or agent of such candidate or committee.” *Id.* § 106.011(12)(a) (emphasis added).

Florida’s campaign finance code does not define “expressly advocate.”

(IFS is aware, however, that Florida’s Division of Elections has interpreted “express advocacy” according to the *Buckley* standard. Fla. Div. of Elec. Op. DE 12-05 (May 24, 2012).)

III. ELECTIONEERING COMMUNICATIONS

(a) Regulation of ECs. Florida regulates electioneering communications. *See id.* § 106.011(8)(a). Furthermore, it regulates “electioneering communications organizations,” meaning “any group, other than a political party, affiliated party committee, or political committee, whose election-related activities are limited to making expenditures for electioneering communications or accepting contributions for the purpose of making electioneering communications and whose activities would not otherwise require the group to register as a political party or political committee.” *Id.* § 106.011(9).

(b) What Content Triggers Regulation as an Electioneering Communication. A communication is regulated if it “refers to or depicts a clearly identified candidate for office without expressly advocating the election or defeat of a candidate but . . . is susceptible of no reasonable interpretation other than an appeal to vote for or against a specific candidate.” *Id.* § 106.011(8)(a).

(Florida’s current EC content standard is based on *Broward Coalition v. Browning*, 2009 WL 1457972 (N.D. Fla. 2009), which held that only communications containing the

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“functional equivalent of express advocacy,” as the U.S. Supreme Court articulated in *WRTL II*, may be regulated as ECs. *See* Fla. Laws 2010-167 § 19.)

(c) Types of Media Covered. “Electioneering communication” includes communications that are “publicly distributed by a television station, radio station, cable television system, satellite system, newspaper, magazine, direct mail, or telephone.” Fla. Stat. Ann. § 106.011(8)(a).

(d) Reporting Threshold. A group must file a statement of organization as an electioneering communications organization within 24 hours of making expenditures for an electioneering communication in excess of \$5,000 within the timeframes specified in section (e), below. *Id.* § 106.03(1)(b).

(e) Time Windows. Regulated communications are those that are made “within 30 days before a primary or special primary election or 60 days before any other election for the office sought by the candidate.” *Id.* § 106.011(8)(a)(2).

(f) Jurisdictional Limitation. An electioneering communication must be “targeted to the relevant electorate in the geographic area the candidate would represent if elected.” *Id.* § 106.011(8)(a)(3).

(g) Donor Disclosure. General donor disclosure appears to be required. Specifically, disclosure is required for anyone who has made “contributions *to or for such electioneering communications organization*.” *See id.* § 106.0703(3)(a) (emphasis added).

Arguably, only donors who provide funds “made *for the purpose of* influencing the results of an election or *making an electioneering communication*” should be required to be disclosed, *see id.* § 106.011(5)(a) (defining “contribution”), but it is unclear whether donor disclosure on EC organization reports is, in fact, subject to this limitation.

If general donor disclosure is required, there do not appear to be any provisions under which donors could avoid disclosure by prohibiting their funds from being used for ECs, or by funding ECs out of a segregated account.

(h) 501(c)(3) Exemption. There is no specific 501(c)(3) exemption for sponsors of electioneering communications.

(i) Media Exemption. There is an exemption for “[a] communication in a news story, commentary, or editorial distributed through the facilities of a radio station, television station, cable television system, or satellite system, unless the facilities are owned or controlled by a political party, political committee, or candidate.” *Id.* § 106.011(8)(b)(2).

(j) Other Exemptions. There is an exemption for “[a] communication that constitutes a public debate or forum that includes at least two opposing candidates for an office or one advocate and one opponent of an issue, or that solely promotes such a debate or forum and

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is made by or on behalf of the person sponsoring the debate or forum.” *Id.* § 106.011(8)(b)(3).

IV. DONOR DISCLOSURE FOR INDEPENDENT EXPENDITURES MADE BY ENTITIES THAT ARE NOT PACS

(a) Donor Disclosure. General donor disclosure appears to be required.

Any person who makes an IE of \$5,000 or more, in aggregate, “shall file periodic reports of such expenditures in the same manner . . . as a political committee supporting or opposing such candidate or issue.” *Id.* § 106.071(1). Pursuant to the political committee reporting requirements, the name and address of “each person who has made one or more contributions to or for such committee or candidate within the reporting period” is required to be disclosed. *See id.* § 106.07(4)(a)(1).

A corporation or other business entity – but not an individual – triggers political committee registration and reporting by making IEs exceeding \$500 in support of or in opposition to a candidate. *See id.* §§ 106.011(16)(a)(1)(c), (16)(b)(2).

Arguably, only donors who provide funds “made *for the purpose of* influencing the results of an election” should be required to be disclosed, *see id.* § 106.011(5)(a) (defining “contribution”), but it is unclear whether donor disclosure on IE reports is, in fact, subject to this limitation.

If general donor disclosure is required, there do not appear to be any provisions under which donors could avoid disclosure by prohibiting their funds from being used for ECs, or by funding ECs out of a segregated account.

(b) Threshold for Donor Disclosure. While there is a threshold for an individual or entity triggering IE reports, there is no dollar threshold for donor disclosure once reporting is triggered. *See id.* § 106.07(4)(a)(1).

V. DISCLAIMER REQUIREMENTS FOR INDEPENDENT EXPENDITURES AND ELECTIONEERING COMMUNICATIONS

(a) Form of Disclaimer. Florida broadly requires disclaimers for IEs, ECs, political advertisements, and “miscellaneous advertisements.” In general, no particular form is mandated.

For ECs, the law requires that an EC other than a telephone call “shall prominently state” the disclaimer; an EC telephone call “shall identify” the persons or organizations sponsoring the call. *Id.* § 106.1439. For IEs, disclaimers must generally be written. *See id.* § 106.143(5)(b).

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(b) Content of Disclaimer. As discussed in more detail below, Florida generally requires political advertisements¹⁵ and ECs to identify the person or committee who paid for the advertisement.

Political advertisements paid for by an independent expenditure must prominently state: “Paid political advertisement paid for by (name and address of person or committee paying for the advertisement) independently of any (candidate or committee).” *Id.* § 106.071(2). Relatedly:

Any person who makes an independent expenditure for a political advertisement shall provide a written statement that no candidate has approved the advertisement to the newspaper, radio station, television station, or other medium for each such advertisement submitted for publication, display, broadcast, or other distribution. *The advertisement must also contain a statement that no candidate has approved the advertisement.*

Id. § 106.143(5)(b) (emphasis added).

An electioneering communication other than a telephone call “shall prominently state ‘Paid electioneering communication paid for by (Name and address of person paying for the communication).’” *Id.* § 106.1439. An EC telephone call “shall identify the persons or organizations sponsoring the call by stating either: ‘Paid for by (insert name of persons or organizations sponsoring the call)’ or ‘Paid for on behalf of (insert name of persons or organizations authorizing call).’” *Id.*

“Any telephone call supporting or opposing a candidate, elected public official, or ballot proposal must identify the persons or organizations sponsoring the call by stating either: ‘paid for by _____’ (insert name of persons or organizations sponsoring the call) or ‘paid for on behalf of _____’ (insert name of persons or organizations authorizing call).” *Id.* § 106.147(1)(a).

(c) Types of Media Covered. Read together, Florida’s disclaimer requirements apply broadly to “communications media,” which includes “broadcasting stations, newspapers, magazines, outdoor advertising facilities, printers, direct mail, advertising agencies, the Internet, and telephone companies.” *Id.* § 106.011(4).

(d) Exceptions. The IE disclaimer requirements for political advertisements do not apply to “novelty items having a retail value of \$10 or less which support, but do not oppose, a candidate or issue.” *Id.* § 106.071(3).

The general disclaimer requirements for “political advertisements” under § 106.143 do not apply if the message or advertisement is:

(a) Designed to be worn by a person.

¹⁵ “Political advertisement” means “a paid expression in a communications medium . . . whether radio, television, newspaper, magazine, periodical, campaign literature, direct mail, or display or by means other than the spoken word in direct conversation, which expressly advocates the election or defeat of a candidate or the approval or rejection of an issue.” *Id.* § 106.011(15).

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(b) Placed as a paid link on an Internet website, provided the message or advertisement is no more than 200 characters in length and the link directs the user to another Internet website that complies with subsection (1).

(c) Placed as a graphic or picture link where compliance with the requirements of this section is not reasonably practical due to the size of the graphic or picture link and the link directs the user to another Internet website that complies with subsection (1).

(d) Placed at no cost on an Internet website for which there is no cost to post content for public users.

(e) Placed or distributed on an unpaid profile or account which is available to the public without charge or on a social networking Internet website, as long as the source of the message or advertisement is patently clear from the content or format of the message or advertisement. A candidate or political committee may prominently display a statement indicating that the website or account is an official website or account of the candidate or political committee and is approved by the candidate or political committee. A website or account may not be marked as official without prior approval by the candidate or political committee.

(f) Distributed as a text message or other message via Short Message Service, provided the message is no more than 200 characters in length or requires the recipient to sign up or opt in to receive it.

(g) Connected with or included in any software application or accompanying function, provided that the user signs up, opts in, downloads, or otherwise accesses the application from or through a website that complies with subsection (1).

(h) Sent by a third-party user from or through a campaign or committee's website, provided the website complies with subsection (1).

(i) Contained in or distributed through any other technology-related item, service, or device for which compliance with subsection (1) is not reasonably practical due to the size or nature of such item, service, or device as available, or the means of displaying the message or advertisement makes compliance with subsection (1) impracticable.

Id. § 106.143(10).

VI. STATUTORY OR REGULATORY AUTHORITY FOR SUPER PACS

Although Florida law does not appear to specifically provide for super PACs, Florida PACs are not subject to any source prohibitions or amount limitations on the contributions they may receive.

VII. MAJOR/PRIMARY PURPOSE FOR PAC STATUS

Florida's definition of a political committee does not have a major or primary purpose limitation. *See id.* § 106.011(16)(a).

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VIII. PAC STATUS DETERMINATION AND THRESHOLDS

(a) PAC Definition. In relevant part, Florida defines a political committee as:

A combination of two or more individuals, or a person other than an individual, that, in an aggregate amount in excess of \$500 during a single calendar year:

- a. *Accepts contributions* for the purpose of making contributions to any candidate, political committee, affiliated party committee, or political party;
- b. *Accepts contributions* for the purpose of expressly advocating the election or defeat of a candidate or the passage or defeat of an issue;
- c. *Makes expenditures* that expressly advocate the election or defeat of a candidate or the passage or defeat of an issue; or
- d. *Makes contributions* to a common fund, other than a joint checking account between spouses, from which contributions are made to any candidate, political committee, affiliated party committee, or political party.

Id. § 106.011(16)(a) (emphasis added).

(As discussed above in Section II, Florida does not define “express advocacy.”)

(b) Threshold for PAC Registration/Reporting. Registration is required for a political committee that “receives contributions or makes expenditures during a calendar year in an aggregate amount exceeding \$500.” *Id.* § 106.03(1)(a).

This threshold is not indexed for inflation. *See id.*

(c) Threshold for Disclosure of PAC Donors. There is no dollar threshold for donor disclosure. A PAC must report the “full name, address, and occupation, if any, of each person who has made one or more contributions” during the reporting period. *Id.* § 106.07(4)(a)(1).

(d) Disclosure of Donors’ Employer Information on PAC Reports. Florida does not require donors’ employer information on PAC reports. *See id.* § 106.07(4)(a).

IX. REGULATION OF “INCIDENTAL COMMITTEES”

Florida requires registration and reporting for “electioneering communications organizations.” Such organizations must register “within 24 hours after the date on which it makes expenditures for an electioneering communication in excess of \$5,000.” *Id.* § 106.03(1)(b).

In addition, as discussed above in Section VII, Florida’s lack of any major/primary purpose standard in its PAC definition arguably functions as a form of “incidental committee” regulation.

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X. PRIVATE ENFORCEMENT ACTIONS

Florida does not appear to provide for private enforcement actions. Although a citizen may file a sworn complaint alleging a violation of the campaign finance code, jurisdiction to investigate and determine violations is vested in the Florida Elections Commission. *See id.* § 106.25.

XI. COORDINATION

(a) **“Content Prong.”** An expenditure by a person “for the purpose of expressly advocating the election or defeat of a candidate” is not an IE if it includes the “dissemination, distribution, or republication, in whole or in part, of a broadcast or a written, graphic, or other form of campaign material prepared by the candidate, the candidate's campaign, or an agent of the candidate, including a pollster, media consultant, advertising agency, vendor, advisor, or staff member.” *Id.* § 106.011(12)(b)(3).

Additionally, “an electioneering communication does not constitute an independent expenditure and is not subject to the limitations applicable to independent expenditures.” *Id.* § 106.011(8)(d).

As discussed above, Florida’s statute does not define “express advocacy.”

(b) **Former Employee/Vendor “Conduct Prong.”** There does not appear to be any restrictions specific to a former employee or former vendor. *See id.* § 106.011(12)(b)(1).

(c) **Public Information Exemption.** There is no express exemption for public information.

XII. LOBBYING

(a) **General Lobbyist/Lobbyist Principal Donor Disclosure.** Florida does not require donor disclosure by either lobbyists or lobbyist principals, either through registration or reporting. *See id.* §§ 11.045, 112.3215.

(b) **Grassroots Lobbying.** Florida separately regulates legislative and executive branch lobbying, and its definitions are broad enough that they could encompass grassroots lobbying activities.

Legislative branch lobbying means “influencing or attempting to influence legislative action or nonaction through oral or written communication or an attempt to obtain the goodwill of a member or employee of the Legislature.” *Id.* § 11.045(1)(e).

Executive branch “lobbying” means “seeking, on behalf of another person, to influence an agency with respect to a decision of the agency in the area of policy or procurement or an attempt to obtain the goodwill of an agency official or employee.” *Id.* § 112.3215(1)

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(IFS is aware that Florida purports to regulate at least some legislative grassroots lobbying activities. *See* Office of Legislative Services, Informal Op. No. 02-01 (Feb. 4, 2002).)

(c) Forms of Grassroots Lobbying Communications Regulated. If grassroots lobbying is regulated, Florida’s law does regulate any specific forms of grassroots lobbying. *See* Fla. Stat. §§ 11.045(1)(e) and 112.3215(1).

(d) Grassroots Lobbying Reference to Specific Legislation. If grassroots lobbying is regulated, a reference to specific legislation does not appear to be required. *See id.*

(e) Grassroots Lobbying Registration and Reporting Thresholds. If grassroots lobbying is regulated, there are no monetary thresholds for registration and reporting (provided a lobbyist receives some payment) – although there are some other criteria for when registration and reporting are required. *See id.* § 11.045(g) (defining legislative “lobbyist”); *id.* § 112.3215(1)(h) and Fla. Admin. Code § 34-12.100 (defining executive “lobbyist”; *see also* Fla. Stat. § 11.045(2) and Joint Rules of the Fla. Legislature 1.1(2) (providing for legislative lobbyist registration); Fla. Stat. § 112.3215(3) (providing for executive lobbyist registration)).

(f) Donor Disclosure for Grassroots Lobbying. N/A

(g) Earmarked Donor Disclosure for Grassroots Lobbying. N/A

(h) Donor Disclosure Threshold for Grassroots Lobbying (If Not Limited to Earmarked Donors). N/A

(i) Threshold Indexing (If Grassroots Lobbying Is Regulated). There are no monetary thresholds.

GEORGIA

I. FALSE POLITICAL SPEECH LAW

Georgia does not appear to have a false political speech law.

II. DEFINITION OF EXPENDITURE/EXPRESS ADVOCACY

An “independent expenditure” is “a political campaign communication that expressly advocates the election or defeat of a clearly identified candidate that is not made in cooperation, consultation, or concert with or at the request or suggestion of a candidate or candidate’s authorized committees.” Ga. Comp. R. & Regs. 189-2-.01.

“Express advocacy” is not further defined in the statute or regulations.

(State Ethics Commission¹⁶ Adv. Op. 2010-05 confirmed that Georgia relies on the *Buckley* standard for express advocacy.)

An “expenditure” is defined as any payment:

made for the purpose of influencing the nomination for election or election of any person, bringing about the recall of a public officer holding elective office or opposing the recall of a public officer holding elective office, or *the influencing of* voter approval or rejection of a proposed constitutional amendment, a state-wide referendum, or a proposed question which is to appear on the ballot in this state or in a county or a municipal election in this state.

Ga. Code § 21-5-3(12) (emphasis added).

III. ELECTIONEERING COMMUNICATIONS

Georgia does not appear to regulate electioneering communications.

IV. DONOR DISCLOSURE FOR INDEPENDENT EXPENDITURES MADE BY ENTITIES THAT ARE NOT PACS

(a) Donor Disclosure. General donor disclosure appears to be required for making IEs.

Georgia requires any organization that makes independent expenditures and “which receives donations during a calendar year from persons who are members or supporters of the committee” to register and report as an “independent committee.” Ga. Code §§ 21-5-3(15), 21-5-34(e). Independent committees are required to report “any person making a contribution of more than \$100.00.” *Id.* § 21-5-34(f)(2)(A).

While an argument could be made that the only donors that should be required to be disclosed are those who made “contributions” to the entity “for the purpose of influencing

¹⁶ The State Ethics Commission is now known as the Georgia Government Transparency and Campaign Finance Commission. *See* Ga. Code § 21-5-4(a).

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the nomination for election or election of any person for office . . . ” in Georgia, *see* Ga. Stat. § 21-5-3(7) (defining “contribution”), it is unclear if donor disclosure on IE reports is, in fact, limited in such manner.

(IFS is not aware of any official guidance clarifying the donor disclosure requirement. The independent committee reporting instructions and form also do not clarify this issue. *See* Ga. Gov’t Transparency and Campaign Finance Comm’n, Independent Committee Report, *at* http://ethics.ga.gov/wp-content/uploads/2015/06/2014_CCDR_INDPT-Independent_writable.pdf. It is also not entirely clear whether a business corporation which makes IEs and which does not receive any “donations” is required to register and report as an “independent committee.” The Georgia Government Transparency and Campaign Finance Commission has suggested to IFS that a business corporation also is required to register and report, although the agency also previously provided IFS with contradictory advice.)

(b) Threshold for Donor Disclosure. Independent committees are required to report “any person making a contribution of more than \$100.00.” *Id.* § 21-5-34(f)(2)(A). It is unclear what period of time is covered by this threshold, or if it covers any person who has *ever* given more than \$100 to the sponsor of the IE.

If donor disclosure is not limited to donors of earmarked funds, there does not appear to be any allowance under which donors may avoid disclosure if they prohibit their donations from being used to fund IEs, or whereby disclosure may be limited to donors to a segregated account that is used to fund IEs. *See id.*

V. DISCLAIMER REQUIREMENTS FOR INDEPENDENT EXPENDITURES AND ELECTIONEERING COMMUNICATIONS

(a) Form of Disclaimer. There are no particular form requirements for disclaimers. *See id.* § 21-5-34(f)(3)

(b) Content of Disclaimer. An IE must “clearly state that it has been financed by [the] independent committee” paying for the IE. *Id.*

(c) Types of Media covered. The disclaimer requirement is not limited to any particular types of media. *See id.*

(d) Exceptions. There are no exceptions to the disclaimer requirement. *See id.*

VI. STATUTORY OR REGULATORY AUTHORITY FOR SUPER PACS

Georgia law provides for “independent committees,” *id.* § 21-5-3(15), and “[c]ampaign contribution limits on contributions to candidates do not apply to independent expenditures made to influence candidate elections, Ga. Comp. R. & Regs. 189-3-.01(9)(f), but does not otherwise explicitly provide for super PACs. However, Georgia law does not impose any contribution amount limitations on contributions to PACs or prohibit corporate

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contributions to PACs, generally, and thus super PACs are permitted under the statute and regulations.

VII. MAJOR/PRIMARY PURPOSE FOR PAC STATUS

Georgia does not have a major or primary purpose test. *See* Ga. Code § 21-5-3(20). (This is confirmed by State Ethics Commission Adv. Op. No. 2010-02.)

VIII. PAC STATUS DETERMINATION AND THRESHOLDS

(a) PAC Definition. The definition of “political action committee” is “[a]ny committee, club, association, partnership, corporation, labor union, or other group of persons which receives donations during a calendar year from persons who are members or supporters of the committee and which contributes funds to one or more candidates for public office or campaign committees of candidates for public office.” *Id.*

In addition, PAC registration is also triggered by making “expenditures.” Ga. Comp. R. & Regs. 189-04-.01(1).

(As discussed above in Section II, Georgia has a very vague and broad “expenditure” definition. *See* Ga. Code § 21-5-3(12).)

(b) Threshold for PAC Registration/Reporting. The threshold is accepting contributions and making expenditures in excess of \$25,000 per calendar year. Ga. Comp. R. & Regs. 189-04-.01(2).

This threshold is not adjusted for inflation. *See id.*

(c) Threshold for Disclosure of PAC Donors. A PAC must disclose donors who contribute in excess of \$100 in a calendar year. Ga. Code Ann. § 21-5-34(b)(1)(A); Ga. Comp. R. & Regs. 189-03-.01(1).

(d) Disclosure of Donors’ Employer Information on PAC Reports. Disclosure of donors’ employer information is required. *Id.*

IX. REGULATION OF “INCIDENTAL COMMITTEES”

As discussed above in Section IV, the requirement that a corporation register before making independent expenditures is akin to regulation of “incidental committees.”

X. PRIVATE ENFORCEMENT ACTIONS

Georgia campaign finance law does not provide for private enforcement actions. *See* Ga. Code § 21-5-6 (describing authority of Georgia Government Transparency and Campaign Finance Commission over complaint and investigation process).

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XI. COORDINATION

(a) **“Content Prong.”** Georgia’s coordinated expenditure regulation applies only to independent expenditures, which covers only express advocacy. *See* Ga. Comp. R. & Regs. 189-2-.01. As discussed above in Section II, Georgia’s statute and regulations do not define “express advocacy.”

(b) **Former Employee/Vendor “Conduct Prong.”** Georgia’s coordination rule does not address former employees or vendors. *See id.* 189-3-.01(9)(f).

(c) **Public Information Exemption.** Georgia does not appear to have a public information exemption.

XII. LOBBYING

(a) **General Lobbyist/Lobbyist Principal Donor Disclosure.** Donor disclosure is not required for lobbyist registration and reporting. *See* Ga. Code §§ 21-5-71, 21-5-73 (lobbyist registration and reporting requirements).

(b) **Grassroots Lobbying.** There is no definition of “lobbying.” Instead, the state regulates five classes of lobbyists, defined by whether they receive compensation for “undertaking” to influence, promote, or oppose various governmental actions. *See id.* § 21-5-70. This is a broad definition and appears to cover grassroots activities.

(This understanding is confirmed by State Ethics Comm’n Adv. Op. No. 2007-004 (July 26, 2007)).

(c) **Forms of Grassroots Lobbying Communications Regulated.** There are no particular forms of grassroots lobbying that are regulated. *See* Ga. Code § 21-5-70.

(d) **Grassroots Lobbying Reference to Specific Legislation.** A reference to specific legislation is not required for grassroots lobbying to be regulated. *See id.*

(e) **Grassroots Lobbying Registration and Reporting Thresholds.** Legislative lobbyists are required to register and report if they: (1) are compensated more than \$250 in a calendar year for legislative lobbying (including grassroots lobbying); or (2) a natural person who spends more than \$1,000 during a calendar year on legislative lobbying (including grassroots lobbying). Ga. Code § 21-5-70(5)(A), (B). State agency (executive branch) lobbyists are required to register and report if they are “compensated [in any amount] specifically for undertaking to promote or oppose the passage of any rule or regulation of any state agency.” *Id.* § 21-5-70(5)(H).

(Unlike legislative lobbyists, agency/executive lobbyist status is not triggered by a natural person making expenditures on such lobbying.)

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(f) Donor Disclosure for Grassroots Lobbying. There is no donor disclosure in Georgia. *See* Ga. Code §§ 21-5-71, 21-5-73 (lobbyist registration and reporting requirements).

(g) Earmarked Donor Disclosure for Grassroots Lobbying. N/A

(h) Donor Disclosure Threshold for Grassroots Lobbying (If Not Limited to Earmarked Donors). N/A

(i) Threshold Indexing (If Grassroots Lobbying Is Regulated). There are no registration and reporting thresholds in Georgia for most types of lobbyists, and for legislative lobbyists, the thresholds are not indexed for inflation. *See id.* §§ 21-5-70(5) and 21-5-71.

HAWAII

I. FALSE POLITICAL SPEECH LAW

Hawaii does not appear to have a false political speech law.

II. DEFINITION OF EXPENDITURE/EXPRESS ADVOCACY

Hawaii defines independent expenditures as communications containing express advocacy, and express advocacy is defined according to the *Furgatch* standard. However, Hawaii also defines an “expenditure” based on a “for the purpose of influencing” standard.

Expenditure. An “expenditure” means any of the following:

(1) Any purchase or transfer of money or anything of value, or promise or agreement to purchase or transfer money or anything of value, or payment incurred or made, or the use or consumption of a nonmonetary contribution *for the purpose of*:

(A) *Influencing* the nomination for election, or the election, of any person seeking nomination for election or election to office, whether or not the person has filed the person's nomination papers;

(B) *Influencing* the outcome of any question or issue that has been certified to appear on the ballot at the next applicable election; or

(C) Use by any party for the purposes set out in subparagraph (A) or (B);

(2) Any payment, by any person other than a candidate, candidate committee, or noncandidate committee, of compensation for the services of another person that are rendered to the candidate, candidate committee, or noncandidate committee for any of the purposes mentioned in paragraph (1)(A); provided that payment under this paragraph shall include provision of services without charge; or

(3) The expenditure by a candidate of the candidate's own funds for the purposes set out in paragraph (1)(A).

Haw. Rev. Stat. § 11-302 (emphasis added).

Independent Expenditure. An “independent expenditure” is “an expenditure by a person *expressly advocating* the election or defeat of a clearly identified candidate that is not made in concert or cooperation with or at the request or suggestion of the candidate, the candidate committee, a party, or their agents.” *Id.* (emphasis added).

Express Advocacy. “Expressly advocating” is defined as:

a communication when taken as a whole and with limited reference to external events, could be susceptible to no other reasonable interpretation but as an exhortation to vote for or against a candidate because:

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- (1) The communication is unmistakable, unambiguous, and suggestive of only one meaning;
- (2) The communication presents a clear plea for action and is not merely informative; and
- (3) Reasonable minds could not differ as to whether the communication encourages actions to elect or defeat a clearly identified candidate or encourages some other kind of action.

Haw. Code R. § 3-160-6.

III. ELECTIONEERING COMMUNICATIONS

(a) Regulation of ECs. Hawaii regulates electioneering communications.

“Electioneering communication” means:

any advertisement that is broadcast from a cable, satellite, television, or radio broadcast station; published in any periodical or newspaper or by electronic means; or sent by mail at a bulk rate, and that: (1) Refers to a clearly identifiable candidate; (2) Is made, or scheduled to be made, either within thirty days prior to a primary or initial special election or within sixty days prior to a general or special election; and (3) Is not susceptible to any reasonable interpretation other than as an appeal to vote for or against a specific candidate.

Haw. Rev. Stat. § 11-341(d).

Notably, a communication that constitutes an “expenditure” by the expending organization is not an EC. *Id.*

(b) What Content Triggers Regulation as an Electioneering Communication. A communication is regulated if it “refers to a clearly identifiable candidate” and “[i]s not susceptible to any reasonable interpretation other than as an appeal to vote for or against a specific candidate.” *Id.*

(c) Types of Media Covered. The definition of “electioneering communication” covers advertisements broadcast from a cable, satellite, television, or radio broadcast station; published in any periodical or newspaper or by electronic means; or sent by mail at a bulk rate. *Id.*

(d) Reporting Threshold. Hawaii requires reporting by any person who makes aggregate expenditures of \$2,000 in a calendar year for electioneering communications. *Id.* § 11-341(a).

(e) Time Windows. An electioneering communication is one that is made or scheduled to be made either within 30 days before a primary or initial special election, or within 60 days before a general or special election. *Id.* § 11-341(d).

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(f) Jurisdictional Limitation. Hawaii does not appear to have any jurisdictional limitations on the definition of an EC. *Id.*

(g) Donor Disclosure. It appears that donor disclosure is only required for earmarked donations.

An EC report must include the names and addresses of all persons who made contributions “for the purpose of publishing or broadcasting the electioneering communications.” *Id.* § 11-341(b)(6)-(7).

Additionally, if an EC advertisement is broadcast, televised, circulated, or published, including by electronic means, and is paid for by a noncandidate committee that certifies to the commission that it makes only independent expenditures, the EC report must identify the three top contributors who made the highest aggregate contributions for the purpose of funding the advertisement. *Id.* §§ 11-341(b)(9), 11-393(a).

(h) 501(c)(3) Exemption. There is no specific 501(c)(3) exemption for sponsors of electioneering communications.

(i) Media Exemption. An electioneering communication does not include communications “[i]n a news story or editorial disseminated by any broadcast station or publisher of periodicals or newspapers, unless the facilities are owned or controlled by a candidate, candidate committee, or noncandidate committee.” *Id.* § 11-341(d).

(j) Other Exemptions. Other exemptions to the definition of an electioneering communication include “in house bulletins” and communications “[t]hat constitute a candidate debate or forum, or solely promote a debate or forum and are made by or on behalf of the person sponsoring the debate or forum.” *Id.*

A “house bulletin” is “a communication sponsored by any person in the regular course of publication for limited distribution primarily to its employees or members.” *Id.* § 11-302.

IV. DONOR DISCLOSURE FOR INDEPENDENT EXPENDITURES MADE BY ENTITIES THAT ARE NOT PACS

(a) Donor Disclosure. General donor disclosure appears to be required.

A person who makes independent expenditures must register as a “noncandidate committee” within 10 days of receiving contributions or making IEs exceeding \$1,000 in aggregate during a two-year election period. Haw. Rev. Stat. § 11-321(g). Noncandidate committees must file organizational and ongoing reports that disclose each person who “contribution[s]” of more than \$100 in aggregate either since the last election or during the election period. Haw. Rev. Stat. §§ 11-323(a)(12), 11-335(b)(1).

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Arguably, only donors who provide funds “for the purpose of influencing” an election should be required to be disclosed, *see id.* § 11-302 (defining “contribution”),¹⁷ but it is unclear whether donor disclosure on noncandidate committee reports is, in fact, subject to this limitation.

An “election period” means:

- (1) The two-year time period between the day after the general election through the day of the next general election, if a candidate is seeking nomination or election to a two-year office;
- (2) The four-year time period between the day after the general election through the day of the next general election, if a candidate is seeking nomination or election to a four-year office; or
- (3) For a special election, the period between the day after the general election for that office through the day of the special election.

Id. § 11-302.

(b) Threshold for Donor Disclosure. Donor disclosure is required for donors of more than \$100 in aggregate during an “election period.” *See id.* §§ 11-323(a)(12), 11-335(b)(1).

Additionally, if a person other than an individual, for-profit business entity, or labor union contributes more than \$10,000 in aggregate during an election period to a noncandidate committee making only IEs, the noncandidate committee must disclose one of the following on its organizational report and ongoing reports:

- (A) The internet address where the contributing entity's disclosure report can be publicly accessed, if the contributing entity is subject to any state or federal disclosure reporting requirements regarding the source of the contributing entity's funds;
- (B) The name, address, occupation, and employer of each funding source of \$100 or more in the aggregate in an election period to that contributing entity; or
- (C) An acknowledgment that the contributing entity is not subject to any state or federal disclosure reporting requirements regarding the source of the contributing entity's funds.

Id. §§ 11-323(a)(12), 11-335(b)(1).

Hawaii does not appear to have any provision under which donors may avoid disclosure if they prohibit their donations from being used to fund IEs, or whereby disclosure may be limited to donors to a segregated account that is used to fund IEs.

¹⁷ Even the definition of a “contribution” with respect to funds given to a noncandidate committee appears to have a “for the purpose of influencing” intent standard. *See id.*

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V. DISCLAIMER REQUIREMENTS FOR INDEPENDENT EXPENDITURES AND ELECTIONEERING COMMUNICATIONS

(a) Form of Disclaimer. In general, there are no specific form requirements for disclaimers. *See id.* § 11-391.

The top-contributors disclaimer requirement for ads by noncandidate committees also generally follow the format of the media used, and TV and video ads may use either a printed or audible disclaimer. *See id.* § 11-393 and Haw. Code R. § 3-60-149.

(b) Content of Disclaimer. The general disclaimers for advertisements must include (1) the name and address of the candidate, candidate committee, noncandidate committee, or other person paying for the advertisement; and (2) a notice that either (a) the advertisement has the approval and authority of the candidate (“provided that an advertisement paid for by a candidate, candidate committee, or ballot issue committee does not need to include the notice”), or (b) the advertisement has not been approved by the candidate. Haw. Rev. Stat. § 11-391.

The “top contributor” disclaimers for advertisements made by noncandidate committees must be “in a prominent location immediately after or below the notices required by [§ 11-391].” This additional notice shall start with the words, “The three top contributors for this advertisement are,” followed by the names of the three top contributors . . . who made the highest aggregate contributions to the noncandidate committee for the purpose of funding the advertisement.” *Id.* § 11-393(a). “[T]op contributor” means a contributor who has contributed an aggregate amount of \$10,000 or more to a noncandidate committee within a twelve-month period prior to the purchase of an advertisement. *Id.* § 11-393(e).

(c) Types of Media Covered. There does not appear to be any limitation to the types of media covered. Disclaimer requirements apply to all “advertisements,” which include “any communication . . . [that] [a]dvocates or supports the nomination, opposition, or election of [a] candidate, or advocates the passage or defeat of the issue or question on the ballot.” *Id.* § 11-302.

(d) Exceptions. Disclaimers for advertisements are not required for “sundry items,” which include “clothing, bumper stickers, pins, buttons, and similar small items upon which the [requisite] notice . . . cannot be conveniently printed; and signs and banners.” Haw. Code R. § 3-160-2.

Separately, an advertisement paid for by a candidate, candidate committee, or ballot issue committee is not required to contain a notice that such advertisement has the approval and authority of the candidate. Haw. Rev. Stat. § 11-391.

Finally, the notice of top contributors required by § 11-393 does not apply “to [a] radio or other audio advertisement under thirty seconds in duration, or television or other video advertisement, under twenty seconds in duration.” *See id.* § 11-393(c); Haw. Code R. § 3-60-149(b).

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VI. STATUTORY OR REGULATORY AUTHORITY FOR SUPER PACS

Hawaii's statute does not appear to provide for super PACs and still limits contributions to a noncandidate committee to \$1,000 per election. *See* Haw. Rev. Stat. § 11-358.

(However, IFS is aware that the Commission has been permanently enjoined from enforcing this limit by the decision in *Yamada v. Weaver*, 872 F. Supp. 2d 1023 (D. Hawaii 2012), *aff'd in part and rev'd in part sub nom. Yamada v. Snipes*, 786 F.3d 1182 (9th Cir. 2015) (affirming injunction against contribution limit).

VII. MAJOR/PRIMARY PURPOSE FOR PAC STATUS

Hawaii's definition of a "noncandidate committee" requires an organization to have "the purpose" – but not the "major" or "primary purpose" – of making contributions or expenditures or incurring financial obligations to influence an election. Haw. Rev. Stat. § 11-302.

"The purpose" standard is unclear, and courts have taken opposite approaches in construing this standard. *Compare CFIF v. Ireland*, 2008 U.S. Dist. LEXIS 83856 at *48 (S.D. W. Va. 2008) and 849 F. Supp. 2d 659, 673 (S.D. W. Va. 2011) (holding that "the purpose" standard is more precise than the "major purpose" standard) with *Yamada*, 786 F.3d at 1200-1201 (suggesting that "the purpose" standard is broader than the "primary purpose" standard, and that it could mean *one of* an organization's purposes).

VIII. PAC STATUS DETERMINATION AND THRESHOLDS

(a) PAC Definition. Hawaii defines a "noncandidate committee" as "an organization, association, party, or individual that has the purpose of *making or receiving contributions, making expenditures*, or incurring financial obligations to influence the nomination for election, or the election, of any candidate to office, or for or against any question or issue on the ballot." Haw. Rev. Stat. § 11-302 (emphasis added).)

(As discussed above in Section II, however, Hawaii has a very vague and broad definition of "expenditure.")

(b) Threshold for PAC Registration/Reporting. In general, a "noncandidate committee" must register by filing an organizational report "within ten days of receiving contributions or making or incurring expenditures of more than \$1,000, in the aggregate, in a two-year election period." Haw. Rev. Stat. § 11-321(g).

This threshold is not indexed for inflation. *See id.*

An "election period" means:

- (1) The two-year time period between the day after the general election through the day of the next general election, if a candidate is seeking nomination or election to a two-year office;

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(2) The four-year time period between the day after the general election through the day of the next general election, if a candidate is seeking nomination or election to a four-year office; or

(3) For a special election, the period between the day after the general election for that office through the day of the special election.

Id. § 11-302.

(c) Threshold for Disclosure of PAC Donors. In general, a noncandidate committee's organizational report and ongoing reports must include "the name, address, employer, and occupation of each contributor who contributed an aggregate amount of more than \$100 to the noncandidate committee," either since the last election or during the election period. Haw. Rev. Stat. §§ 11-323(a)(12), 11-335(b)(1).

A noncandidate committee making only IEs that receives a contribution exceeding \$10,000 in the aggregate during an election period from an entity other than an individual, for-profit business entity, or labor union must disclose additional information about such contributors. *See id.* §§ 11-323(a)(12), 11-335(b)(1).

(d) Disclosure of Donors' Employer Information on PAC Reports. Employer information for each contributor of more than \$100 in aggregate must be disclosed on a noncandidate committee's organizational and ongoing reports. *See id.* §§ 11-323(a)(12), 11-335(b)(1).

IX. REGULATION OF "INCIDENTAL COMMITTEES"

Hawaii does not regulate "incidental committees" as such. However, its lack of a major/primary purpose standard for PAC status, and the requirement that sponsors of IEs totaling more than \$1,000 during a two-year election period register and report as "noncandidate committees," arguably function as a regulation of incidental committees.

X. PRIVATE ENFORCEMENT ACTIONS

Hawaii does not permit private enforcement actions. Although any person may file a complaint with the Commission, *see id.* § 11-402, adjudication authority rests with the Commission, *see id.* §§ 11-408, -409, -410.

XI. COORDINATION

(a) "Content Prong." Hawaii's coordination law applies to express advocacy expenditures and, as discussed above in Section II, express advocacy is defined using a *Furgatch* standard. *See* Haw. Rev. Stat. § 11-302 and Haw. Code R. § 3-160-6 and -8.

(b) Former Employee/Vendor "Conduct Prong." Hawaii's coordination rules do not specifically address former employees or vendors. *See* Haw. Code R. § 3-160-8.

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(c) **Public Information Exemption.** Hawaii's coordination rules do not provide for a public information exemption. *See* Haw. Code R. § 3-160-8.

XII. LOBBYING

(a) **General Lobbyist/Lobbyist Principal Donor Disclosure.** Lobbyists, lobbyist employers and principals, and certain entities that engage in grassroots lobbying are required to disclose on their reports "[t]he name and address of each person making contributions to the person filing the statement *for the purpose of lobbying* in the total sum of \$25 or more during the statement period and the amount or value of such contributions." Haw. Rev. Stat. § 97-3(a) and (c)(4) (emphasis added).

Thus, it appears only contributors of funds earmarked for lobbying must be disclosed.

(b) **Grassroots Lobbying.** Hawaii's lobbying definition covers grassroots lobbying activities. Hawaii defines "lobbying" as "communicating directly or through an agent, or *soliciting others to communicate*, with any official in the legislative or executive branch, for the purpose of attempting to influence legislative or administrative action or a ballot issue." *Id.* § 97-1(7) (emphasis added).

(c) **Forms of Grassroots Lobbying Communications Regulated.** The law does not specify which forms of grassroots communications are regulated; however, the lobbying definition would presumptively cover any communication that solicits others to communicate with a legislative or executive branch official for the purpose of attempting to influence legislative or administrative action. *See id.*

(IFS is aware that the Hawaii State Ethics Commission has advised that the following activities may qualify as grassroots lobbying: preparing or distributing flyers and other mailers; encouraging members of the public to contact their legislators to support or oppose legislation; producing or paying for media announcements which advocated for or against proposed legislation, including television and radio spots, newspaper ads, and internet posts; and organizing sign-waving or rallies to demonstrate support for or against legislation. Haw. State Ethics Comm'n Adv. Op. No. 2013-05, available at <http://ethics.hawaii.gov/wp-content/uploads/2013/10/EthicsAdvisory2013-05.pdf>.)

(d) **Grassroots Lobbying Reference to Specific Legislation.** Hawaii does not require grassroots communications to reference specific legislation. *See* Haw. Rev. Stat. § 97-1(7).

(e) **Grassroots Lobbying Registration and Reporting Thresholds.** The thresholds for registration and reporting for grassroots activities are the same as for lobbying generally. Lobbyist registration is required for any "individual" who engages in lobbying for pay for more than five hours in any month of a reporting period or who spends over \$750 during a reporting period on "lobbying." Haw. Rev. Stat. § 97-1(6). Lobbyist principals do not separately register.

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Statements of expenditures (*i.e.*, reports) must be filed by (1) individual lobbyists; (2) any person who spends \$750 or more during a six-month period for the purpose of lobbying, including communications urging others to communicate with public officials; and (3) each person who employs or contracts for the services of one or more lobbyists. *Id.* § 97-3(a).

(f) Donor Disclosure for Grassroots Lobbying. The donor disclosure requirements for grassroots lobbying are the same as for lobbying generally.

Lobbyists, lobbyist employers and principals, and certain entities that engage in grassroots lobbying are required to disclose on their reports “[t]he name and address of each person making contributions to the person filing the statement *for the purpose of lobbying* in the total sum of \$25 or more during the statement period and the amount or value of such contributions.” Haw. Rev. Stat. § 97-3(a) and (c)(4) (emphasis added).

Thus, it appears only contributors of funds earmarked for lobbying must be disclosed.

(IFS is aware that the Hawaii State Ethics Commission has advised that “if an organization receives monetary or in-kind contributions *for the purpose of lobbying*, the organization may be required to report the amount and source of those contributions.” Haw. State Ethics Comm’n Adv. Op. No. 2013-05; *see also* Haw. State Ethics Comm’n, Staff Recommendation Regarding Registration and Reporting Requirements for Lobbyists and Organizations That Engage in Lobbying Activities, at 8 (Dec. 11, 2014) (adopted Dec. 17, 2014), *available at* <http://ethics.hawaii.gov/wp-content/uploads/2014/12/RecommendationLobbying.pdf> (discussing in-kind contributions for grassroots lobbying).)

(g) Earmarked Donor Disclosure for Grassroots Lobbying. Donor disclosure appears to be limited to contributions earmarked for lobbying purposes. *See* Haw. Rev. Stat. § 97-3(c)(4).

(h) Donor Disclosure Threshold for Grassroots Lobbying (If Not Limited to Earmarked Donors). N/A

(i) Threshold Indexing (If Grassroots Lobbying Is Regulated). Hawaii’s lobbyist registration and reporting thresholds are not indexed for inflation. *See* Haw. Rev. Stat. §§ 97-1(6) and -3(a).

IDAHO

I. FALSE POLITICAL SPEECH LAW

Idaho does not appear to have a false political speech law.

II. DEFINITION OF EXPENDITURE/EXPRESS ADVOCACY

“Independent expenditure” means “any expenditure by a person for a communication expressly advocating the election, passage or defeat of a clearly identified candidate or measure that is not made with the cooperation or with the prior consent of, or in consultation with, or at the consent of, or in consultation with, or at the request of a suggestion of, a candidate or any agent or authorized committee of the candidate or political committee supporting or opposing a measure.” Idaho Code § 67-6602(i).

“Expressly advocating” means “any communication containing a message advocating election, passage or defeat including, but not limited to, the name of the candidate or measure, or expression such as ‘vote for,’ ‘elect,’ ‘support,’ ‘cast your ballot for,’ ‘vote against,’ ‘defeat’ or ‘reject.’” *Id.*

(The Secretary of State’s guidance confirms that Idaho relies on a “magic words” standard for express advocacy. *See* Idaho Sec’y of State, *Guidelines Set by Secretary of State for Independent Expenditures*, <http://www.sos.idaho.gov/elect/indexpen.htm> (“Section 67-6602(g), Idaho Code, defines ‘express advocacy’ by the use of certain magic words.”); *see also* Campaign Finance - Frequently Asked Questions - Independent Expenditures, *at* <http://www.sos.idaho.gov/ELECT/finance/faq/independent.html> (same)).

The definition of an “expenditure” seemingly has no limiting principle whatsoever, and is defined to:

include[] any payment, contribution, subscription, distribution, loan, advance, deposit, or gift of money or anything of value, and includes a contract, promise, or agreement, whether or not legally enforceable, to make an expenditure. The term “expenditure” also includes a promise to pay, a payment or a transfer of anything of value in exchange for goods, services, property, facilities or anything of value for the purpose of assisting, benefiting or honoring any public official or candidate, or assisting in furthering or opposing any election campaign.

Idaho Code § 67-6602(h) (emphasis added).

III. ELECTIONEERING COMMUNICATIONS

(a) Regulation of ECs. Idaho regulates electioneering communications. Idaho Code § 67-6602(f).

(b) What Content Triggers Regulation as an Electioneering Communication. An electioneering communication is one that “[u]nambiguously refers to any candidate.” *Id.* § 67-6602(f)(1)(i).

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(c) Types of Media Covered. The law covers communications that are “broadcast by television or radio, printed in a newspaper or on a billboard, directly mailed or delivered by hand to personal residences, or telephone calls made to personal residences, or otherwise distributed[.]” *Id.* § 67-6602(f)(1).

(d) Reporting Threshold. The reporting threshold is \$100 to trigger regular reporting requirements. The reporting threshold is \$1,000 to trigger 48-hour reporting requirements. *Id.* § 67-6630(2), (3). These thresholds are not indexed for inflation. *See id.*

(e) Time Windows. The time window for electioneering communications is 30 days before a primary and 60 days before a general election. *Id.* § 67-6602(f)(1)(ii).

(f) Jurisdictional Limitation. The definition of electioneering communication covers only those communications made to or distributed to “an audience that includes members of the electorate for [the candidate’s] public office.” *Id.* § 67-6602(f)(1)(iii).

(g) Donor Disclosure. The person making the electioneering communication must disclose the identity of any donor “who contribute[d] [\$50] or more to [the] person” sponsoring the EC. *Id.* § 67-6630(1).

There does not appear to be any allowance under which donors may avoid disclosure if they prohibit their donations from being used to fund ECs, or whereby disclosure may be limited to donors to a segregated account that is used to fund ECs.

(h) 501(c)(3) Exemption. There does not appear to be an exemption for 501(c)(3) organizations.

(i) Media Exemption. Exempted from the definition of electioneering communication are “[a]ny news articles, editorial endorsements, opinion or commentary, writings, or letter to the editor printed in a newspaper, magazine, or other periodical not owned or controlled by a candidate or political party.” *Id.* § 67-6602(f)(2). Also excluded are “[a]ny editorial endorsements or opinions aired by a broadcast facility not owned or controlled by a candidate or political party.” *Id.*

(j) Other Exemptions. Idaho excludes the following types of communications from the definition of electioneering communication:

- Any communication by persons made in the regular course and scope of their business or any communication made by a membership organization solely to members of such organization and their families;
- Any communication which refers to any candidate only as part of the popular name of a bill or statute;
- A communication which constitutes an expenditure or an independent expenditure under this chapter.

Id.

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IV. DONOR DISCLOSURE FOR INDEPENDENT EXPENDITURES MADE BY ENTITIES THAT ARE NOT PACS

(a) Donor Disclosure. Donor disclosure is not required on IE reports by entities that are not PACs. Idaho Code § 67-6611.

However, Idaho requires “nonbusiness entities” that make “expenditures” in Idaho in excess of \$1,000 in a calendar year to file a statement with the Secretary of State. *Id.* § 67-6606. The statement must disclose the names and addresses of the entity, its principal officer or directors, and “each person whose fees, dues, payments or other consideration paid to such nonbusiness entity during either of the prior two (2) calendar years has exceeded five hundred dollars (\$500) or who has paid or has agreed to pay fees, dues, payments or other consideration exceeding five hundred dollars (\$500) to such entity during the current year.” *Id.* In other words, disclosure does not appear to be limited to donors of earmarked funds.

A “nonbusiness entity” is an organization that “(1) [d]oes not have as its principal purpose the conduct of business activities for profit; and (2) [r]eceived during the preceding or current calendar year contributions, gifts or membership fees, which in the aggregate exceeded ten percent (10%) of its total receipts for such year.” *Id.* § 67-6602(n).

An “expenditure” is defined as “any payment . . . *for the purpose of* assisting, benefiting or honoring any public official or candidate, or *assisting in furthering or opposing any election campaign.*” *Id.* § 67-6602(h) (emphasis added).

(b) Threshold for Donor Disclosure. Disclosure is required for “each person whose fees, dues, payments or other consideration paid to such nonbusiness entity during either of the prior two (2) calendar years has exceeded five hundred dollars (\$500) or who has paid or has agreed to pay fees, dues, payments or other consideration exceeding five hundred dollars (\$500) to such entity during the current year.” *Id.* § 67-6611.

There does not appear to be any allowance under which donors may avoid disclosure if they prohibit their donations from being used to fund IEs, or whereby disclosure may be limited to donors to a segregated account that is used to fund IEs.

V. DISCLAIMER REQUIREMENTS FOR INDEPENDENT EXPENDITURES AND ELECTIONEERING COMMUNICATIONS

(a) Form of Disclaimer. There is no particular form specified for the disclaimers required for communications containing express advocacy. Idaho Code § 67-6614A.

(b) Content of Disclaimer. The disclaimer must clearly indicate the person responsible for the communication. *Id.* (More detailed disclaimers are required for “persuasive polls.” *Id.* § 67-6629.)

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(c) **Media Covered.** The disclaimer statute covers communications “through any broadcasting station, newspaper, magazine, outdoor advertising facility, direct mailing or any other type of general public political advertising.” *Id.* § 67-6614A.

(d) **Exceptions.** The disclaimer is not required for campaign buttons, bumper strips, pins, pens and similar small items upon which a disclaimer cannot be conveniently printed. Idaho Admin. Code r. 34.03.01.015.

VI. STATUTORY OR REGULATORY AUTHORITY FOR SUPER PACS

While Idaho statutes and regulations do not specifically provide for Super PACs, there are no restrictions on contributions to political committees. *See* Idaho Code § 67-6610A.

VII. MAJOR/PRIMARY PURPOSE FOR PAC STATUS

Idaho statutes and regulations do not impose a major/primary purpose test for PAC status. *See id.* § 67-6602(p).

VIII. PAC STATUS DETERMINATION AND THRESHOLDS

(a) **PAC Definition.** The definition of “political committee” is based solely on receiving contributions and making expenditures or being “specifically designated” to support or oppose a candidate or ballot measure. *Id.* (emphasis added).

(As discussed above in Section II, Idaho has a very vague and broad “expenditure” definition. *See id.* § 67-6602(h).)

(b) **Threshold for PAC Registration/Reporting.** The threshold for registration and reporting is receiving contributions and making expenditures in an amount exceeding \$500 in any calendar year. *Id.*

This threshold is not adjusted for inflation. *See id.*

(c) **Threshold for Disclosure of PAC Donors.** A PAC must disclose donors who contribute a total of more than \$50 during the reporting period. *Id.* §§ 67-6612(a)(1) and -6607.

(d) **Disclosure of Donors’ Employer Information on PAC Reports.** Disclosure of donors’ employer information is not required. *Id.*

IX. REGULATION OF “INCIDENTAL COMMITTEES”

Idaho does not appear to regulate incidental committees.

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X. PRIVATE ENFORCEMENT ACTIONS

Idaho allows any citizen to seek injunctive relief in state court to enforce Idaho's campaign finance laws. *Id.* § 67-6626. A successful plaintiff may recover attorney's fees. *Id.* Otherwise, campaign finance laws are enforced by the Secretary of State and prosecutors. *Id.* §§ 67-6623, 6625.

XI. COORDINATION

(a) **"Content Prong."** An independent expenditure is defined in reference to "any expenditure by a person for a communication expressly advocating the election, passage or defeat of a clearly identified candidate or measure . . ." *Id.* § 67-6602(i). As discussed above in Section II, the Idaho statute sets forth a *Buckley* express advocacy standard. *See id.* § 67-6602(g).

(b) **Former Employee/Vendor "Conduct Prong."** Idaho's statutes and regulations do not expressly govern coordination through former employees and vendors.

(c) **Public Information Exemption.** Idaho's statutes and regulations do not expressly provide for a public information exemption.

XII. LOBBYING

(a) **General Lobbyist/Lobbyist Principal Donor Disclosure.** Donor disclosure is not required for lobbyist registration and reporting. *See* Idaho Code § 67-6617 (lobbyist registration); *id.* § 67-6619 (lobbyist reporting).

(b) **Grassroots Lobbying.** The definition of lobbying encompasses grassroots activity. *Id.* § 67-6602(j) (broadly defining lobbying as "causing others to make contact with" designated public officials).

(c) **Forms of Grassroots Lobbying Communications Regulated.** Idaho statutes and regulations do not specify particular forms of grassroots lobbying that are regulated.

(d) **Grassroots Lobbying Reference to Specific Legislation.** The definition of lobbying does not appear to require a reference to specific legislation. *See id.*

(e) **Grassroots Lobbying Registration and Reporting Thresholds.** A person is not required to register as a lobbyist if his or her compensation "does not exceed two hundred fifty dollars (\$250) in the aggregate during any calendar quarter." *Id.* § 67-6618.

(f) **Donor Disclosure for Grassroots Lobbying.** Registered lobbyists are not required to disclose donors. *See* Idaho Code § 67-6617 (lobbyist registration); *id.* § 67-6619 (lobbyist reporting).

(g) **Earmarked Donor Disclosure for Grassroots Lobbying.** N/A

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(h) Donor Disclosure Threshold for Grassroots Lobbying (If Not Limited to Earmarked Donors). N/A

(i) Threshold Indexing (If Grassroots Lobbying Is Regulated). The threshold for lobbyist registration is not indexed for inflation. *See id.* § 67-6618.

ILLINOIS

I. FALSE POLITICAL SPEECH LAW

Illinois does not appear to have a false political speech law.

II. DEFINITION OF EXPENDITURE/EXPRESS ADVOCACY

Illinois regulates express advocacy and ECs as IEs, and the EC definition sets forth a *WRTL* standard (within 30/60-day pre-election time windows). However, Illinois also has a broader “expenditure” definition.

Independent Expenditure. Illinois defines “independent expenditure” as “any payment, gift, donation, or expenditure of funds (i) by a natural person or political committee *for the purpose of making electioneering communications or of expressly advocating* for or against the nomination for election, election, retention, or defeat of a clearly identifiable public official or candidate or for or against any question of public policy to be submitted to the voters and (ii) that is not made in connection, consultation, or concert with or at the request or suggestion of the public official or candidate, the public official's or candidate's designated political committee or campaign, or the agent or agents of the public official, candidate, or political committee or campaign.” 10 Ill. Comp. Stat. 5/9-1.15 (emphasis added).

Express Advocacy. Express advocacy communications “are those that unequivocally state in the communication that the public official or candidate ought to be elected, nominated or defeated or the question of public policy ought to be approved or defeated.” Ill. Admin. Code tit. 26, § 100.10. The regulation notes that these communications typically contain the terms “vote for”, “elect” or, in the case of expressly advocating the defeat of a candidate, “vote against”, “vote no”, “defeat”, etc. *Id.*

Electioneering Communication. An electioneering communication is one that “is susceptible to no reasonable interpretation other than as an appeal to vote for or against a clearly identified candidate for nomination for election, election, or retention, a political party, or a question of public policy.” 10 Ill. Comp. Stat. 5/9-1.14(a).

Expenditure. An “expenditure” is defined, in relevant part, as any payment “*in connection with* the nomination for election, election, or retention of any person to or in public office or in connection with any question of public policy.” *Id.* 5/9-1.5(A)(1) (emphasis added).

III. ELECTIONEERING COMMUNICATIONS

(a) **Regulation of ECs.** Illinois regulates electioneering communications. *Id.* 5/9-1.14.

(b) **What Content Triggers Regulation as an Electioneering Communication.** An electioneering communication is one that “is susceptible to no reasonable interpretation other than as an appeal to vote for or against a clearly identified candidate for nomination for election, election, or retention, a political party, or a question of public policy.” *Id.* 5/9-1.14(a).

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(c) Types of Media Covered. The law covers “any broadcast, cable, or satellite communication, including radio, television, or Internet communication.” *Id.*

(d) Reporting Threshold. A person must register and report as an “independent expenditure committee” after making IEs/ECs in a total amount that exceeds \$5,000 during any 12-month period. *Id.* 5/9-1.8(f).

This threshold is not indexed for inflation. *See id.*

(e) Time Windows. The time window for electioneering communications is 30 days before a primary and 60 days before a general election. *Id.* 5/9-1.14(a).

(f) Jurisdictional Limitation. The definition of electioneering communication covers only those communications “targeted to the relevant electorate.” *Id.*

(g) Donor Disclosure. A PAC must disclose donors who make “contributions” in excess of \$150 during the reporting period. *Id.* 5/9-11(a).

(Arguably, the only donors that should be required to be disclosed are those who made “contributions” that the entity “knowingly received in connection with the nomination for election, election, or retention of any candidate or person to or in public office or in connection with any question of public policy” in Illinois. *See id.* 5/9-1.4(A)(1) (defining “contribution”).

There does not appear to be any allowance under which donors may avoid disclosure if they prohibit their donations from being used to fund IEs, or whereby disclosure may be limited to donors to a segregated account that is used to fund IEs.

(h) 501(c)(3) Exemption. The definition of electioneering communication excludes a “communication by an organization operating and remaining in good standing under Section 501(c)(3) of the Internal Revenue Code of 1986.” *Id.* 5/9-1.14(b).

(i) Media Exemption. Exempted from the definition of electioneering communication is a “communication, other than an advertisement, appearing in a news story, commentary, or editorial distributed through the facilities of any legitimate news organization, unless the facilities are owned or controlled by any political party, political committee, or candidate.” *Id.* 5/9-1.14(b).

(j) Other Exemptions. Illinois excludes the following types of communications from the definition of electioneering communication:

- A communication made solely to promote a candidate debate or forum that is made by or on behalf of the person sponsoring the debate or forum.
- A communication made as part of a non-partisan activity designed to encourage individuals to vote or to register to vote.
- A communication exclusively between a labor organization, as defined under federal or State law, and its members.

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- A communication exclusively between an organization formed under Section 501(c)(6) of the Internal Revenue Code and its members.

Id.

IV. **DONOR DISCLOSURE FOR INDEPENDENT EXPENDITURES MADE BY ENTITIES THAT ARE NOT PACS**

As discussed above in Section III(d), with respect to electioneering communications, all sponsors of independent expenditures totaling more than \$5,000 during any 12-month period must register and report as political committees. *Id.* 5/9-1.8(f).

V. **DISCLAIMER REQUIREMENTS FOR INDEPENDENT EXPENDITURES AND ELECTIONEERING COMMUNICATIONS**

(a) Form of Disclaimer. Illinois law does not specify the form of the disclaimer. *See Id.* 5/9-9.5.

(b) Content of Disclaimer. The communication must identify the political committee paying for the communication. *Id.* Advertisements promoting a candidate must also state that the committee is not authorized by the candidate and that the candidate is not responsible for the activities of the committee. *Id.* 5/9-8.

(c) Types of Media Covered. The disclaimer requirement covers “a pamphlet, circular, handbill, Internet or telephone communication, radio, television, or print advertisement, or other communication directed at voters.” *Id.* 5/9-9.5.

(d) Exceptions. The disclaimer requirement does not apply to “items that are too small to contain the required disclosure” or to “any telephone communication using random sampling or other scientific survey methods to gauge public opinion for or against any candidate or question of public policy.” *Id.*

VI. **STATUTORY OR REGULATORY AUTHORITY FOR SUPER PACS**

Illinois statutes allow for the creation of Super PACs. *Id.* 5/9-1.8(f) (defining “independent expenditure committee”), -8.5(e-5) (“An independent expenditure committee may accept contributions in any amount from any source”).

VII. **MAJOR/PRIMARY PURPOSE FOR PAC STATUS**

Illinois does not apply a major or primary purpose test for PAC status. *See id.* 5/9-1.8(d) (definition of “political action committee”).

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VIII. PAC STATUS DETERMINATION AND THRESHOLDS

(a) **PAC Definition.** The definition of “political action committee” is based on accepting contributions or making expenditures. *See id.* 5/9-1.8(d).

(As discussed above in Section II, Illinois has a very vague and broad “expenditure” definition. *See id.* 5/9-1.5(A)(1).)

(b) **Threshold for PAC Registration/Reporting.** The threshold is accepting contributions or making expenditures in excess of \$5,000 during any 12-month period. *Id.*

This threshold is not adjusted for inflation. *See id.*

(c) **Threshold for Disclosure of PAC Donors.** A PAC must disclose donors who contribute in excess of \$150 during the reporting period. *Id.* 5/9-11(a).

(d) **Disclosure of Donors’ Employer Information on PAC Reports.** Disclosure of donors’ employer information is required if the donor contributed in excess of \$500 in a reporting period. *Id.*

IX. REGULATION OF “INCIDENTAL COMMITTEES”

The definition of “political committee” effectively allows regulation of “incidental committees.” *See id.* 5/9-1.8(d) (corporation making expenditures in excess of \$5,000 is a political committee).

X. PRIVATE ENFORCEMENT ACTIONS

A complainant may seek judicial review if the State Board of Elections denies or does not act upon a complaint. *Id.* 5/9-22.

XI. COORDINATION

(a) **“Content Prong.”** As discussed above in Section II, Illinois’s definition of “independent expenditure” covers express advocacy and electioneering communications. *Id.* 5/9-1.15. The definition of electioneering communications covers speech that “is susceptible to no reasonable interpretation other than as an appeal to vote for or against a clearly identified candidate for nomination for election, election, or retention, a political party, or a question of public policy.” Thus, any illegal coordination will be in connection with *WRTL* express advocacy.

(b) **Former Employee/Vendor “Conduct Prong.”** There is no former employee / vendor prong. For a communication to be coordinated, it must be “made in connection, consultation, or concert with or at the request or suggestion of the public official or candidate, the public official's or candidate’s designated political committee or campaign,

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or the agent or agents of the public official, candidate, or political committee or campaign.” *Id.* 5/9-1.15.

(c) **Public Information Exemption.** There is no public information exemption.

XII. LOBBYING

(a) **General Lobbyist/Lobbyist Principal Donor Disclosure.** Donor disclosure is not required for lobbyist registration and reporting. *See* 25 Ill. Comp. Stat. 170/5 (lobbyist registration) and 170/6 (lobbyist reporting).

(b) **Grassroots Lobbying.** As a general matter, Illinois does not regulate grassroots lobbying. “Lobbying” is defined as “any communication with an official of the executive or legislative branch of State government . . . for the ultimate purpose of influencing any executive, legislative, or administrative action.” *Id.* 170/2(e).

(Illinois expressly excludes “grass roots lobbying communications” from the definition of “lobbying.” Ill. Admin. Code tit. 2, § 560.100 In addition, “grass roots lobbying events” also do not, as a general matter, trigger registration and reporting requirements, and are only reportable for registered lobbyists and principals of registered lobbyists. *See id.*; *see also* Ill. Sec’y of State, *Grass Roots Lobbying Frequently Asked Questions*, at 1 (Mar. 2012), *available at* http://www.cyberdriveillinois.com/publications/pdf_publications/sos_ig21.pdf.)

(c) **Forms of Grassroots Lobbying Communications Regulated.** N/A

(d) **Grassroots Lobbying Reference to Specific Legislation.** N/A

(e) **Grassroots Lobbying Registration and Reporting Thresholds.** N/A

(f) **Donor Disclosure for Grassroots Lobbying.** N/A

(g) **Earmarked Donor Disclosure for Grassroots Lobbying.** N/A

(h) **Donor Disclosure Threshold for Grassroots Lobbying (If Not Limited to Earmarked Donors).** N/A

(i) **Threshold Indexing (If Grassroots Lobbying Is Regulated).** N/A

INDIANA

I. FALSE POLITICAL SPEECH LAW

In Indiana:

A person may not knowingly or intentionally authorize, finance, sponsor, or participate in the preparation, distribution, or broadcast of paid political advertising or campaign material that falsely represents that a candidate in any election is or has been an officeholder.

Ind. Code § 3-9-3-5(c)

II. DEFINITION OF EXPENDITURE/EXPRESS ADVOCACY

Indiana has a broad definition of “expenditure.”

“Expenditure” means “a disbursement (whether characterized as an advance, a deposit, a distribution, a gift, a loan, a payment, a purchase, or a contract or promise to make a disbursement) of property (as defined in IC 35-31.5-2-253) that:

(1) is made for the purpose of influencing:

(A) the nomination or election to office of a candidate;

(B) the election of delegates to a state constitutional convention; or

(C) the outcome of a public question; and

(2) is made by:

(A) an individual, except that a contribution made by an individual is not considered to be an expenditure;

(B) a candidate’s committee;

(C) a regular party committee; or

(D) a political action committee.”

Ind. Code § 3-5-2-23(a). When funds are transferred from one committee to another, “the disbursing committee is considered to be making an expenditure in the amount of the funds transferred.” *Id.* § 3-5-2-23(b).

Indiana law does not separately provide for “independent expenditures.”

III. ELECTIONEERING COMMUNICATIONS

Indiana does not regulate electioneering communications.

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IV. DONOR DISCLOSURE FOR INDEPENDENT EXPENDITURES MADE BY ENTITIES THAT ARE NOT PACS

Indiana does not require reporting for independent expenditures made by entities that are not PACs.

V. DISCLAIMER REQUIREMENTS FOR INDEPENDENT EXPENDITURES AND ELECTIONEERING COMMUNICATIONS

(a) Form of Disclaimer. Indiana requires disclaimers for “communications expressly advocating the election or defeat of a clearly identified candidate.” Ind. Code § 3-9-3-2.5(c). The disclaimer must “appear[] and [be] presented in a clear and conspicuous manner to give the reader or observer adequate notice of the identity of persons who paid for and, when required, who authorized the communication. A disclaimer does not comply with this section if the disclaimer is difficult to read or if the placement of the disclaimer is easily overlooked.” *Id.* § 3-9-3-2.5(d). Additionally, a disclaimer that appears on a printed communication “must be of sufficient type size to be clearly readable by the recipient of the communication” and “must be printed with a reasonable degree of color contrast between the background and the printed statement.” *Id.* § 3-9-3-2.5(e).

(b) Content of Disclaimer. The disclaimer must “give the reader or observer adequate notice of the identity of persons who paid for and, when required, who authorized the communication.” *Id.* § 3-9-3-2.5(d). For advertisements that are not authorized by a candidate, candidate’s committee, or agents of the candidate’s committee, the disclaimer must state “the name of the person who paid for the communication and state that the communication is not authorized by any candidate or candidate’s committee.” *Id.* § 3-9-3-2.5(h).

(c) Types of Media Covered. The disclaimer law applies only to various forms of written media. It applies to communications “through a newspaper, a magazine, an outdoor advertising facility, a poster, a yard sign, a direct mailing, or any other type of general public political advertising.” *Id.* § 3-9-3-2.5(b). The disclaimer law does not apply to a communication “in a medium regulated by federal law to the extent that federal law regulates the appearance, content, or placement of the communication in the medium.” *Id.* § 3-9-3-2.5(a).

(d) Exceptions. The following are exempt from the disclaimer requirements:

- (1) A communication relating to an election to a federal office.
- (2) A communication relating to the outcome of a public question.
- (3) A communication described by this section in a medium regulated by federal law to the extent that federal law regulates the appearance, content, or placement of the communication in the medium.
- (4) Bumper stickers, pins, buttons, pens, and similar small items upon which the disclaimer required by this section cannot be conveniently printed.

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(5) Skywriting, water towers, wearing apparel, or other means of displaying an advertisement on which the inclusion of a disclaimer would be impracticable.

(6) Checks, receipts, and similar items of minimal value that do not contain a political message and are used for purely administrative purposes.

(7) A communication by a political action committee organized and controlled by a corporation soliciting contributions to the political action committee by the stockholders, executives, or employees of the corporation and the families of those individuals.

(8) A communication by a political action committee organized and controlled by a labor organization soliciting contributions to the political action committee by the members or executive personnel of the labor organization and the families of those individuals.

(9) A direct mailing of one hundred (100) or less substantially similar pieces of mail.

Id. The disclaimer law also does not apply to “a communication, such as a billboard, that contains only a front face.” *Id.* § 3-9-3-2.5(g).

VI. **STATUTORY OR REGULATORY AUTHORITY FOR SUPER PACS**

Indiana does not have statutory or regulatory authority for super PACs.

(IFS has informally confirmed with the Indiana Secretary of State’s Election Division that the state does not formally recognize super PACs.)

VII. **MAJOR/PRIMARY PURPOSE FOR PAC STATUS**

Indiana does not provide for a major or primary purpose test for PAC status. *See id.* § 3-5-2-37 (defining “political action committee”).

VIII. **PAC STATUS DETERMINATION AND THRESHOLDS**

(a) PAC Definition. A “political action committee” means an organization located within or outside Indiana that satisfies all of the following:

(1) The organization proposes to influence:

(A) the election of a candidate for state, legislative, local, or school board office; or

(B) the outcome of a public question.

(2) The organization accepts contributions or makes expenditures during a calendar year:

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(A) to influence the election of a candidate for state, legislative, local, or school board office or the outcome of a public question that will appear on the ballot in Indiana; and

(B) that in the aggregate exceed one hundred dollars (\$100).

(3) The organization is not any of the following:

(A) An auxiliary party organization.

(B) A legislative caucus committee.

(C) A regular party committee.

(D) A candidate's committee.

Ind. Code § 3-5-2-37(a). “A corporation or labor organization that makes a contribution in accordance with IC 3-9-2 or makes an expenditure is not considered a political action committee.” *Id.* § 3-5-2-37(b).

(As discussed above in Section II, however, the definition of “expenditure” is very open-ended and vague.)

(b) Threshold for PAC Registration/Reporting. The threshold for political committee status is receiving contributions or making expenditures that exceed \$100 in a calendar year. *Id.* § 3-5-2-37(a)(2).

This threshold is not adjusted for inflation. *See id.*

(c) Threshold for Disclosure of PAC Donors. Donors to a political committee are required to be disclosed if they make contributions totaling \$100 or more within the year. *Id.* § 3-9-5-14(b).

(d) Disclosure of Donors' Employer Information on PAC Reports. A donor must report his or her occupation, but not his or her employer, if the donor contributes \$1,000 or more to the political committee during a calendar year. *Id.*

IX. REGULATION OF “INCIDENTAL COMMITTEES”

Indiana does not regulate incidental committees.

X. PRIVATE ENFORCEMENT ACTIONS

Indiana does not appear to allow private enforcement actions. *See id.* §§ 3-9-4-13 and 3-9-4-15 through -17 (providing for audits, investigations, hearings, and civil penalties by the Secretary of State's Election Division, state Election Commission, and county election boards).

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XI. COORDINATION

Indiana considers contributions of goods or services to political committees to be “in-kind contributions,” but the state does not separately regulate coordinated communications. *See id.* § 3-5-2-15(a).

XII. LOBBYING

(a) General Lobbyist/Lobbyist Principal Donor Disclosure. Donor disclosure is not generally required for lobbyist registration and reporting. *See id.* §§ 2-7-2-3 (legislative lobbyist registration), 6-2-1 (executive branch lobbyist registration), 2-7-2-4 (legislative lobbyist employer registration), 2-7-3-3 (legislative lobbyist and employer reporting), 6-2-2 (executive branch lobbyist registration).

(IFS is aware, however, that if a trade association’s principal purpose is lobbying, then the trade association must register as a compensated lobbyist, and its members with dues exceeding \$500 in a registration year must register as employer lobbyists. Indiana Lobby Registration Comm’n (“ILRC”), Adv. Op. 97-07(A) (June 2, 1998) (presuming a trade association’s principal purpose is lobbying if more than 50% of the association’s budget was for lobbying activities). Additionally, if a member and a trade association “enter[] into an additional agreement or contract . . . for lobbying activities and [the member] pays the association greater than \$500 in a reporting period, in addition to the regular membership dues,” then the trade association must register and report as a compensated lobbyist and the member must register and report as an employer lobbyist. *Id.* The ILRC, in informal advice, extended this logic to the treatment of members of other tax-exempt membership organizations. *See* ILRC, *Compilation of Informal Advice to Lobbyists*, at 9, available at http://www.in.gov/ilrc/files/Q_and_A_Document.pdf.)

(b) Grassroots Lobbying. Indiana regulates some forms of legislative grassroots lobbying.

Indiana law defines legislative lobbying as “communicating by any means, or paying others to communicate *by any means*, with any legislative person with the purpose of influencing any legislative action.” Ind. Code § 2-7-1-9 (emphasis added). *See* Ind. Lobby Registration Comm’n (“ILRC”) Adv. Op. No. 2002-01 (Mar. 6, 2003). On the other hand, “Executive branch lobbying activities do not include advertisements to the public disseminated by radio, television, or newspapers and periodicals of general circulation.” Ind. Dep’t of Administration, *Executive Branch Lobbying Manual*, available at http://www.in.gov/idoa/files/EBLR_Manual_090911_.pdf.)

(c) Forms of Grassroots Lobbying Communications Regulated. The statute is not specific in terms of what forms of grassroots lobbying are regulated. *See* Ind. Code § 2-7-1-9 (defining legislative lobbying).

(In an advisory opinion, the ILRC stated that a public relations campaign that goes beyond urging citizens to make their own communications with state legislators and instead uses

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pre-printed postcards or telephone services that directly connect a citizen to his or her state legislator is considered lobbying. ILRC Adv. Op. No. 2002-01 (Mar. 6, 2003)).

(d) Grassroots Lobbying Reference to Specific Legislation. The definition of lobbying covers more than communications related to specific legislation. Indiana’s definition of lobbying covers communications for “the purpose of influencing any legislative action.” Ind. Code § 2-7-1-9. “‘Legislative action’ means any matter within the authority of the general assembly; it includes the drafting, introduction, consideration, modification, enactment, or defeat of any bill, resolution, amendment, report, or other matter by the general assembly or by either house or any committee, subcommittee, joint or select committee thereof, or by a member or employee of the general assembly acting in his official capacity.” *Id.* § 2-7-1-7.

(e) Grassroots Lobbying Registration and Reporting Thresholds. There is a \$500 compensation / expenditure threshold generally for lobbying registration and reporting. *See id.* § 2-7-1-10.

(The Executive Director of the ILRC has confirmed that this \$500 threshold applies to both individual lobbyists as well as employer lobbyists. *See id.* § 2-7-1-12.)

(f) Donor Disclosure for Grassroots Lobbying. There is generally no donor disclosure for lobbying or grassroots lobbying, *but see supra* § XII(a).

(g) Earmarked Donor Disclosure for Grassroots Lobbying. There is generally no donor disclosure for lobbying or grassroots lobbying, *but see supra* § XII(a).

(h) Donor Disclosure Threshold for Grassroots Lobbying (If Not Limited to Earmarked Donors). There is generally no donor disclosure for lobbying or grassroots lobbying, *but see supra* § XII(a).

(i) Threshold Indexing (If Grassroots Lobbying Is Regulated). Registration and reporting thresholds are not indexed for inflation.

IOWA

I. FALSE POLITICAL SPEECH LAW

Iowa does not appear to have a false political speech law.

II. DEFINITION OF EXPENDITURE/EXPRESS ADVOCACY

Iowa defines an “independent expenditure” as “one or more expenditures in excess of one thousand dollars in the aggregate for a communication that expressly advocates the nomination, election, or defeat of a clearly identified candidate . . . that is made without the prior approval or coordination with a candidate [or] candidate’s committee.” Iowa Code § 68A.404(1).

“Express advocacy” or to “expressly advocate” means communication that can be characterized according to at least one of the following descriptions:

- a. The communication is political speech made in the form of a contribution.
- b. In advocating the election or defeat of one or more clearly identified candidates or the passage or defeat of one or more clearly identified ballot issues, the communication includes *explicit words that unambiguously indicate that the communication is recommending or supporting a particular outcome in the election with regard to any clearly identified candidate or ballot issue.*

Id. § 68A.102(14) (emphasis added).

“Express advocacy” includes “a communication that uses any word, term, phrase, or symbol that exhorts an individual to vote for or against a clearly identified candidate or for the passage or defeat of a clearly identified ballot issue.” Iowa Admin. Code r. 351-4.53.

(Iowa does not separately define the term “expenditure,” and a PAC is defined by reference to “expenditures . . . to expressly advocate.” *See* Iowa Code § 68A.102(18). The Iowa Ethics and Campaign Finance Board has confirmed that “Iowa is considered to be a ‘magic words’ state for purposes of differentiating between ‘express advocacy’ and ‘issue advocacy.’” Iowa Ethics & Campaign Disclosure Bd. Adv. Op. No. 2010-03.)

III. ELECTIONEERING COMMUNICATIONS

Iowa does not regulate electioneering communications.

IV. DONOR DISCLOSURE FOR INDEPENDENT EXPENDITURES MADE BY ENTITIES THAT ARE NOT PACS

(a) **Donor Disclosure.** IE reports are required to itemize donors whose donations were “provided for the purpose of furthering the independent expenditure.” Iowa Code § 68A.404(5)(h) (emphasis added). Furthermore, these reports “shall not require the

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identification of individual members who pay dues to a labor union, organization, or association, or individual stockholders of a business corporation.” *Id.*

(b) Threshold for Donor Disclosure. There is no threshold for disclosure of donors. *See id.*

V. DISCLAIMER REQUIREMENTS FOR INDEPENDENT EXPENDITURES AND ELECTIONEERING COMMUNICATIONS

(a) Form of Disclaimer. Iowa law provides that, “[f]or television, video, or motion picture advertising, the attribution statement shall be displayed on the screen in a clearly readable manner for at least four seconds.” Iowa Code § 68A.405; *see also* Iowa Admin. Code r. 351-4.38.

(b) Content of Disclaimer. An independent expenditure communication must indicate that it is “Paid for by” the corporation or other organization, list the address of the corporation or organization, and list the title and name of the CEO (if a corporation) or one of the officers of the organization (if not a corporation). Iowa Code § 68A.405(1)(b), (e), and (f); Iowa Admin. Code r. 351-4.38(4), (6). The disclaimer also must state that it was not authorized by any candidate, candidate’s committee, or ballot issue committee. Iowa Code § 68A.405(1)(b)(2) and (h); Iowa Admin. Code r. 351-4.38(7).

(c) Types of Media Covered. Iowa’s disclaimer requirements apply to “published material” containing express advocacy. “Published material” means “any newspaper, magazine, shopper, outdoor advertising facility, poster, direct mailing, brochure, internet site, campaign sign, or any other form of printed or electronic general public political advertising.” Iowa Code § 68A.405(1)(a)(3). “Published material” includes television, video, or motion picture advertising. *Id.* While “[a] blog that is not owned or controlled by a candidate or committee is not required to include an attribution statement disclosing who paid for the costs of the blog,” “[a] political advertisement on a blog is required to include the appropriate attribution statement disclosing who paid for the advertisement.” Iowa Admin. Code r. 351-4.39(2).

(d) Exceptions. The following are exempt from Iowa’s disclaimer requirements:

- a. The editorials or news articles of a newspaper, magazine, television station, or other print or electronic media that are not paid political advertisements.
- b. Small items upon which the inclusion of the statement is impracticable including but not limited to campaign signs [32 square feet or smaller that have been placed or posted on real property], bumper stickers, pins, buttons, pens, political business cards, and matchbooks.
- c. T-shirts, caps, and other articles of clothing.
- d. Any published material that is subject to federal regulations regarding an attribution requirement.

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e. Any material published by an individual, acting independently, who spends one hundred dollars or less of the individual's own money to advocate the passage or defeat of a ballot issue.

Iowa Code Ann. § 68A.405(2); Iowa Admin. Code 351-4.39(1).

VI. **STATUTORY OR REGULATORY AUTHORITY FOR SUPER PACS**

There is no statutory or regulatory authority for Super PACs.

(Iowa's regulations define persons who make independent expenditures, but do not otherwise qualify as political committees, as "independent expenditure committees." Iowa Admin. Code r. 351-4.1. But this is not a Super PAC as normally understood; it is merely a term to refer to any entity required to file a one-time, event-driven independent-expenditure report.)

VII. **MAJOR/PRIMARY PURPOSE FOR PAC STATUS**

Iowa statutes and regulations do not provide for a major/primary purpose test for PAC status. *See* Iowa Code § 68A.102(18) (defining "political committee" as an organization "that accepts contributions in excess of one thousand dollars in the aggregate, makes expenditures in excess of one thousand dollars in the aggregate, or incurs indebtedness in excess of one thousand dollars in the aggregate in any one calendar year to expressly advocate the nomination, election, or defeat of a candidate for public office, or to expressly advocate the passage or defeat of a ballot issue").

(It appears that an organization is not treated as a political committee unless it has as its "major purpose" making political contributions or sponsoring express advocacy. *See Iowa Right to Life Comm., Inc. v. Tooker*, 808 N.W.2d 417, 430 n.7 (Iowa 2011).)

(There is also a provision in Iowa law that requires "permanent organizations" that are "temporarily engaging in" activities that would cause political committee status to set up a segregated account from which to fund its political activities. *See* Iowa Code § 68A.402(9). But a permanent organization making a one-time contribution of over \$1,000 to a committee may file a special form in lieu of registering and reporting. *See* Iowa Admin. Code r. 351-4.35(1).)

VIII. **PAC STATUS DETERMINATION AND THRESHOLDS**

(a) PAC Definition. The definition of "political committee" is based solely on contributions and expenditures (and "incur[ring] indebtedness . . . to expressly advocate"). *See* Iowa Code § 68A.102(18).

(b) Threshold for PAC Registration/Reporting. The threshold is accepting contributions, making expenditures, or incurring debt totaling more than \$1,000 per calendar year. *Id.*

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This threshold is not adjusted for inflation. *See id.*

(c) Threshold for Disclosure of PAC Donors. A PAC must disclose donors who contribute more than a total of \$25 during a calendar year. *Id.* § 68A.402A(1)(b).

(d) Disclosure of Donors' Employer Information on PAC Reports. Disclosure of donors' employer information is not required. *See id.*

IX. REGULATION OF "INCIDENTAL COMMITTEES"

Iowa does not regulate "incidental committees."

X. PRIVATE ENFORCEMENT ACTIONS

Iowa does not provide for private enforcement of campaign finance violations. *See Iowa Code § 68B.32 et seq.* (authorizing Iowa Ethics & Campaign Disclosure Board to investigate complaints, issue civil penalties, petition for judicial enforcement, and refer complaints to prosecutors).

XI. COORDINATION

(a) "Content Prong." Iowa's coordinated expenditure regulation applies only to express advocacy. Iowa Admin. Code r. 351-4.53(3) and (4); *see also* Iowa Code § 68A.404(1) (defining "independent expenditure"). As discussed above in Section II, Iowa defines IEs according to a *Buckley* express advocacy standard.

(b) Former Employee/Vendor "Conduct Prong." An expenditure is presumed to be communicated if it is "made by or through any person who is or has been authorized to raise or expend funds; who is or has been an officer of the candidate's committee or the ballot issue committee; or who is or has been receiving any form of compensation or reimbursement from the candidate, the candidate's committee, or the ballot issue committee." *Id.* Additionally, "a person making an independent expenditure shall not engage or retain an advertising firm or consultant that has also been engaged or retained *within the prior six months* by the candidate, candidate's committee, or ballot issue committee that is benefited by the independent expenditure." Iowa Code § 68A.404(7) (emphasis added).

(c) Public Information Exemption. Iowa does not appear to have a public information exemption. *See* Iowa Admin. Code r. 351-4.53(4).

XII. LOBBYING

(a) General Lobbyist/Lobbyist Principal Donor Disclosure. Donor disclosure is not required for lobbyist registration and reporting. *See* Iowa Code § 68B.36 (lobbyist registration); *id.* § 68B.38 (lobbyist principal reporting).

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(b) Grassroots Lobbying. The definition of “lobbyist” does not appear to cover grassroots lobbying. *See* Iowa Code § 68B.2 (defining “lobbyist,” in part as, “an individual who, by acting directly . . . [r]eceives compensation to encourage the passage, defeat, approval, veto, or modification of legislation, a rule, or an executive order by the members of the general assembly, a state agency, or any statewide elected official,” or an organization that expenditures, other than to pay lobbyists, “*to communicate in person with members* of the general assembly, a state agency, or any statewide elected official for purposes of encouraging the passage, defeat, approval, veto, or modification of legislation, a rule, or an executive order.”) (emphasis added).

(IFS is aware that the Iowa Ethics and Campaign Disclosure Board has confirmed that “contacting someone other than a government official and trying to affect that person’s opinion or get that person to act is not” covered by the state’s executive branch lobbying law. Adv. Op. 2003-18 (Dec. 3, 2003). IFS is also aware that the lobbyist clerk of the Iowa legislature has advised that efforts to encourage or facilitate citizen communication with legislators through newspaper advertisements, letter writing campaigns, and direct-connect phone calls does not constitute legislative lobbying. However, the lobbyist clerk was unable to advise whether the use of pre-printed postcards would constitute legislative lobbying.)

(c) Forms of Grassroots Lobbying Communications Regulated. N/A

(d) Grassroots Lobbying Reference to Specific Legislation. N/A

(e) Grassroots Lobbying Registration and Reporting Thresholds. N/A

(f) Donor Disclosure for Grassroots Lobbying. N/A

(g) Earmarked Donor Disclosure for Grassroots Lobbying. N/A

(h) Donor Disclosure Threshold for Grassroots Lobbying (If Not Limited to Earmarked Donors). N/A

(i) Threshold Indexing (If Grassroots Lobbying Is Regulated). N/A

KANSAS

I. FALSE POLITICAL SPEECH LAW

Kansas does not have a false political speech law.

II. DEFINITION OF EXPENDITURE/EXPRESS ADVOCACY

Kansas defines expenditures and express advocacy according to the *Buckley* standard.

“Expenditure” means:

(A) Any purchase, payment, distribution, loan, advance, deposit or gift of money or any other thing of value made by a candidate, candidate committee, party committee or political committee *for the express purpose of nominating, electing or defeating a clearly identified candidate for a state or local office.*

(B) Any purchase, payment, distribution, loan, advance, deposit or gift of money or any other thing of value made *to expressly advocate* the nomination, election or defeat of a clearly identified candidate for a state or local office;

(C) any contract to make an expenditure;

(D) a transfer of funds between any two or more candidate committees, party committees or political committees; or

(E) payment of a candidate’s filing fees.

Kan. Stat. Ann. § 25-4143(g)(1) (emphasis added).

“Expressly advocate the nomination, election or defeat of a clearly identified candidate” means:

any communication which uses phrases including, but not limited to:

- (1) “Vote for the secretary of state”;
- (2) “re-elect your senator”;
- (3) “support the democratic nominee”;
- (4) “cast your ballot for the republican challenger for governor”;
- (5) “Smith for senate”;
- (6) “Bob Jones in ‘98”;
- (7) “vote against Old Hickory”;
- (8) “defeat” accompanied by a picture of one or more candidates; or
- (9) “Smith’s the one.”

Id. § 25-4143(h).

III. ELECTIONEERING COMMUNICATIONS

Kansas does not require reporting of nor otherwise regulate “electioneering communications.”

KANSAS

IV. DONOR DISCLOSURE FOR INDEPENDENT EXPENDITURES MADE BY ENTITIES THAT ARE NOT PACS

(a) Donor Disclosure. General donor disclosure appears to be required on IE reports, although an argument could be made that only donors of earmarked funds should be disclosed.

An expenditure report for an entity that is not a PAC must include, among other things, “the name and address of *each person who has made one or more contributions* in an aggregate amount or value in excess of \$50 during the election period together with the amount and date of such contributions.” Kan. Stat. Ann. §§ 25-4150 (requiring sponsors of expenditures that are not PACs to file reports according to *id.* 25-4148) and -4148(b)(2) (reporting requirements) (emphasis added); *see also* Kan. Admin. Regs. § 19-21-5 and 19-29-2.

The report must also include “the name and address of each person from whom an in-kind contribution was received or who has paid for personal services provided without charge to or for any candidate, candidate committee, party committee or political committee, if the contribution is in excess of \$100 and is not otherwise reported.” Kan. Stat. Ann. § 25-4148(b)(8).

Arguably, only donors of funds “for the express purpose of nominating, electing or defeating a clearly identified candidate for a state or local office” or that are “made to expressly advocate the nomination, election or defeat of a clearly identified candidate for a state or local office” should be required to be disclosed. *See id.* § 25-4143(e)(1)(B) (defining “contribution”). However, it is unclear whether donor disclosure on IE reports is, in fact, subject to this limitation.

There also does not appear to be any provision under which donors may avoid disclosure if they prohibit their donations from being used to fund IEs, or whereby disclosure may be limited to donors to a segregated account that is used to fund IEs.

(b) Threshold for Donor Disclosure. Disclosure is required for any donor who makes one or more contributions with an aggregate value exceeding \$50 during the “election period,” and for any donor who makes an in-kind contribution exceeding \$100 that is not otherwise reported. *Id.* § 25-4148(b)(2), (8).

(“Election period” is not expressly defined, but contributions are allocated separately to primary and general elections as follows: “All contributions and other receipts received and expenditures made from and including the January 1 following one general election date until and including the next ensuing primary election date shall be allocated to the primary election on such date. All contributions and other receipts received and expenditures made from midnight on the date of a primary election through and including the December 31 following the date of the next ensuing general election shall be allocated to the general election on such date.” *Id.* § 25-4149(a).)

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V. DISCLAIMER REQUIREMENTS FOR INDEPENDENT EXPENDITURES AND ELECTIONEERING COMMUNICATIONS

(a) Form of Disclaimer. Most political advertising that contains express advocacy must include a disclaimer, but no particular form is specified or required. *See Id.* § 25-4156(b)(1).

(b) Content of Disclaimer. Disclaimers for paid material published in a newspaper or periodical must be “followed by the word ‘advertisement’ or the abbreviation ‘adv.’ in a separate line together with the name of the chairperson or treasurer of the political or other organization sponsoring the same or the name of the individual who is responsible therefor.” *Id.* § 25-4156(b)(1)(A). For other types of IEs, the disclaimer must include a statement which states “paid for by” or “sponsored by” followed by the name of the sponsoring organization and/or the name of the organization’s chairperson or treasurer. *Id.* § 25-4156(b)(1)(B)-(E).

If the sponsoring organization does not have a chairperson, the advertisement must list a responsible individual, which means either (A) “[t]he individual who is the primary funding source”; (B) “if no individual is the primary funding source, the individual who controlled the decision to place the advertisement or produce the item”; or (C) “if no one individual controlled the decision, the individual who controlled the funds.” Kan. Admin. Regs. § 19-20-4(a)(5).

“If an individual is responsible for the item, that individual’s name shall be disclosed, unless the advertisement or item is a brochure, flier, or other political fact sheet and the individual makes expenditures in an aggregate amount of less than \$2,500 within a calendar year.” *Id.* § 19-20-4(a)(6).

(c) Types of Media Covered. Disclaimer requirements apply to “paid matter” containing express advocacy, referred to as “political advertising,” that is (A) “published in a newspaper or other periodical”; (B) “broadcast by any radio or television station”; (C) conducted “by any telephonic means”; (D) conducted by “publishing . . . any brochure, flier or other political fact sheet” (unless published by an individual who makes aggregate expenditures of less than \$2,500 in a calendar year); or (E) conducted by “making . . . any website, email or other type of internet communication.” Kan. Stat. Ann. § 25-4156(b)(1)(A)-(E). The provisions of (E) only apply to a communication made by a candidate, candidate committee, political committee, or party committee and viewed by or disseminated to at least 25 individuals. *Id.* § 25-4156(b)(1)(A)-(E).

Additionally, “[a] postal or internet address that contains words [of express advocacy] shall be considered political advertising if that address is published. Published matter containing an address that constitutes political advertising” requires a disclaimer. Kan. Admin. Regs. § 19-20-4(d).

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(d) Exceptions. The following are exempt from the disclaimer requirements:

- A brochure, flier or other political fact sheet, if the person responsible for the item is an individual who makes aggregate expenditures of less than \$2,500 in a calendar year (Kan. Stat. Ann. § 25-4156(b)(1)(D));
- A telephonic or internet communication if “made over any social media provider which has a character limit of 200 characters or fewer” (*Id.* § 25-4156(b)(2));
- A website, e-mail or other internet communication made by a person other than a candidate, candidate’s committee, political committee, or party committee; or, if such a communication is made by one of these covered entities, it nevertheless is viewed by or disseminated to fewer than 25 individuals (*Id.* § 25-4156(b)(1)(E));
- Yard signs, billboards, bumper stickers, envelopes, t-shirts, pens, pencils, rulers, magnets, or other trinket items (Kan. Admin. Regs. § 19-20-4(c)); and
- [“F]und-raiser invitations, business cards, brochures, or fliers” if these items do not contain express advocacy. *Id.*

VI. STATUTORY OR REGULATORY AUTHORITY FOR SUPER PACS

The Kansas statute does not appear to provide specifically for super PACs. However, Kansas state PACs are not subject to any source prohibitions or amount limitations on the contributions they may receive.

VII. MAJOR/PRIMARY PURPOSE FOR PAC STATUS

A political committee is “any combination of two or more individuals or any person other than an individual, *a major purpose* of which is to expressly advocate the nomination, election or defeat of a clearly identified candidate for state or local office or make contributions to or expenditures for the nomination, election or defeat of a clearly identified candidate for state or local office.” Kan. Stat. Ann. § 25-4143(k)(1) (emphasis added).

VIII. PAC STATUS DETERMINATION AND THRESHOLDS

(a) PAC Definition. Kansas’s definition for a political committee is based on having “a major purpose” of either (a) “expressly advocat[ing] the nomination, election or defeat of a clearly identified candidate for state or local office” or (b) “mak[ing] contributions to or expenditures for the nomination, election or defeat of a clearly identified candidate for state or local office.” Kan. Stat. Ann. § 25-4143(k)(1).

In addition:

The following factors shall be considered in determining whether a combination of two or more persons, or a person other than an individual, constitutes a political committee:

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- (1) The intent of the person or persons;
- (2) the amount of time devoted to the support or opposition of one or more candidates for state office;
- (3) the amount of time devoted to the support or opposition of any other political committee or party committee;
- (4) the amount of contributions, as defined by the act, made to any candidate, candidate committee, party committee or political committee;
- (5) the amount of expenditures, as defined by the act, made on behalf of any candidate, candidate committee, party committee or political committee; and
- (6) the importance to any candidate, candidate committee, party committee or political committee of the activities in which the person or persons engage.

Kan. Admin. Regs. § 19-21-3(a).

(b) Threshold for PAC Registration/Reporting. Kansas has no dollar threshold for PAC registration and reporting; each political committee that “anticipates receiving contributions or making expenditures” must appoint a chairperson and treasurer, register with, and report to the secretary of state. Kan. Stat. Ann. §§ 25-4145(a), 25-4148.

(c) Threshold for Disclosure of PAC Donors. A political committee must report “the name and address of each person who has made one or more contributions in an aggregate amount or value in excess of \$50 during the election period.” *Id.* § 25-4148(b)(2).

“Election period” is not expressly defined, but contributions are allocated separately to primary and general elections as follows: “All contributions and other receipts received and expenditures made from and including the January 1 following one general election date until and including the next ensuing primary election date shall be allocated to the primary election on such date. All contributions and other receipts received and expenditures made from midnight on the date of a primary election through and including the December 31 following the date of the next ensuing general election shall be allocated to the general election on such date.” *Id.* § 25-4149(a).

(d) Disclosure of Donors’ Employer Information on PAC Reports. Political committees must report the *occupation* of an individual who makes a contribution over \$150, but no employer information is required. *Id.* § 25-4148a.

IX. REGULATION OF “INCIDENTAL COMMITTEES”

Kansas does not appear to separately regulate “incidental committees.”

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X. PRIVATE ENFORCEMENT ACTIONS

Kansas law does not provide for private enforcement actions. *See id.* § 25-4161.

XI. COORDINATION

(a) **“Content Prong.”** The only statutory language that addresses coordination states that an “independent expenditure” is one “made without the cooperation or consent of the candidate or agent of such candidate intended to be benefited and which expressly advocates the election or defeat of a clearly identified candidate.” *Id.* § 25-4148c(d)(2).

As discussed above in Section II, Kansas defines express advocacy using a *Buckley* standard. *See id.* § 25-4143(h).

(b) **Former Employee/Vendor “Conduct Prong.”** The Kansas statute and regulations do not address former employees and vendors with respect to coordination.

(c) **Public Information Exemption.** There is no public information exemption for coordination under the Kansas statute and regulations.

XII. LOBBYING

(a) **General Lobbyist/Lobbyist Principal Donor Disclosure.** Kansas does not require donor disclosure on lobbying registration, nor on lobbying reports. Kan. Stat. Ann. §§ 46-265, 46-269.

(b) **Grassroots Lobbying.** Grassroots lobbying is regulated.

Kansas defines “lobbying,” in relevant part, as: “Promoting or opposing *in any manner* action or nonaction by the legislature on any legislative matter or the adoption or nonadoption of any rule and regulation by any state agency.” *Id.* § 46-225(a) (emphasis added).

The regulations further specify that “[a]ny communication which is intended to advocate action or nonaction by the legislature on a legislative matter, including *communications with other persons with the intent that such persons communicate with legislators* in regard thereto, constitutes lobbying.” Kan. Admin. Regs. § 19-61-1(a)(1).

(c) **Forms of Grassroots Lobbying Communications Regulated.** As a general matter, there are no particular forms of grassroots lobbying that are subject to regulation. *See id.* Further, a lobbying “expenditure” specifically includes “the production and dissemination of mass media communications, letter-writing campaigns, and similar transactions that explicitly promote or oppose a clearly identified legislative matter or regulation.” *Id.* § 19-60-3.

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(Note that advertisements as part of a grassroots lobbying campaign may constitute “lobbying” even if they do not expressly direct viewers to contact their legislators. *See* Kan. Gov’t. Ethics Comm’n Adv. Op. 2008-02. Additionally, a website that urges people to contact legislators “about specific legislation or legislative ideas” constitutes “lobbying” if it, “through specific communications promotes or opposes action or nonaction by the legislature.” Kan. Gov’t. Ethics Comm’n Adv. Op. No. 1999-48.)

(d) Grassroots Lobbying Reference to Specific Legislation. A reference to specific legislation does not appear to be required for a communication to be regulated as grassroots lobbying. *See* Kan. Stat. Ann. §§ 46-225(a) and -219; *see also* Kan. Admin. Regs. § 19-61-1(a).

(e) Grassroots Lobbying Registration and Reporting Thresholds. Where lobbyist registration is based upon making expenditures, registration is required for “any person who makes expenditures in an aggregate amount of \$1,000 or more, exclusive of personal travel and subsistence expenses, in any calendar year for lobbying.” *Id.* § 46-222(a).

(Note that the statute and regulations are not clear as to who should register if an organization conducts grassroots activities. Past guidance indicates that an individual or entity who spends more than \$1,000 on grassroots lobbying activities must appoint an individual to register as a lobbyist. *See* Kan. Gov’t. Ethics Comm’n Adv. Op. 2008-02.)

(f) Donor Disclosure for Grassroots Lobbying. Kansas does not require donor disclosure for grassroots lobbying activities. Kan. Stat. Ann. §§ 46-265, 46-269.

(g) Earmarked Donor Disclosure for Grassroots Lobbying. N/A

(h) Donor Disclosure Threshold for Grassroots Lobbying (If Not Limited to Earmarked Donors). N/A

(i) Threshold Indexing (If Grassroots Lobbying Is Regulated). Kansas’s \$1,000 threshold for registration is not indexed for inflation. *See id.* § 46-222(a).

KENTUCKY

I. FALSE POLITICAL SPEECH LAW

Kentucky does not appear to have a false political speech law.

II. DEFINITION OF EXPENDITURE/EXPRESS ADVOCACY

An “independent expenditure” is “the expenditure of money or other things of value for a communication which expressly advocates the election or defeat of a clearly identified candidate or slate of candidates, and which is made without any coordination, consultation, or cooperation with any candidate, slate of candidates, campaign committee, or any authorized person acting on behalf of any of them, and which is not made in concert with, or at the request or suggestion of any candidate, slate of candidates, campaign committee, or any authorized person acting on behalf of any of them.” Ky. Rev. Stat. § 121.015(12).

Express advocacy is not further defined.

(Kentucky does not define or rely on the term “expenditure,” and the PAC definition is based on express advocacy. *See* Ky. Rev. Stat. § 121.015(3)(d). The Kentucky Registry of Election Finance has “confirmed that the ‘express advocacy’ standard as set forth under *Buckley* is the proper standard for analysis of the disclosure and reporting requirements under” Kentucky campaign finance law. Ky. Reg. of Election Finance Adv. Op. 2006-001 (Mar. 9, 2006).)

III. ELECTIONEERING COMMUNICATIONS

Kentucky does not regulate electioneering communications.

IV. DONOR DISCLOSURE FOR INDEPENDENT EXPENDITURES MADE BY ENTITIES THAT ARE NOT PACS

Independent expenditure reports do not require disclosure of any donors. *See* 32 Ky. Admin. R. 1:080.

(*See also* Ky. Registry of Campaign Finance, *Report of an Independent Expenditure* (rev. Apr. 2005), <http://kref.ky.gov/KREF%20Forms%20and%20Pubs/Report%20of%20an%20Independent%20Expenditure.pdf>.)

V. DISCLAIMER REQUIREMENTS FOR INDEPENDENT EXPENDITURES AND ELECTIONEERING COMMUNICATIONS

(a) **Form of Disclaimer.** Kentucky does not have any particular form requirements for disclaimers. Ky. Rev. Stat. § 121.190(1).

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(b) Content of Disclaimer. The disclaimer must contain “the words ‘paid for by’ followed by the name and address of the individual or committee which paid for the communication.” Ky. Rev. Stat. § 121.190(1).

(c) Types of Media Covered. The disclaimer requirement covers “[a]ll newspaper or magazine advertising, posters, circulars, billboards, handbills, sample ballots, and paid-for television or radio announcements which expressly advocate the election or defeat of a clearly identified candidate.” Ky. Rev. Stat. § 121.190(1).

(d) Exceptions. The disclaimer law contains no exceptions.

VI. STATUTORY OR REGULATORY AUTHORITY FOR SUPER PACS

Kentucky’s statute and regulations do not explicitly provide for super PACs.

VII. MAJOR/PRIMARY PURPOSE FOR PAC STATUS

The definition of “permanent committee” requires that the committee have “a primary purpose expressly advocating the election or defeat of one (1) or more clearly identified candidates, slates of candidates, or political parties primary purpose test.” *See* Ky. Rev. Stat. § 121.015(3)(d).

VIII. PAC STATUS DETERMINATION AND THRESHOLDS

(a) PAC Definition. In Kentucky, a “permanent committee” is “a group of individuals . . . which is established as, or intended to be, a permanent organization having as a primary purpose *expressly advocating* the election or defeat of one (1) or more clearly identified candidates, slates of candidates, or political parties, which functions on a regular basis throughout the year.” Ky. Rev. Stat. § 121.015(3)(d) (emphasis added). As discussed above in Section II, Kentucky does not separately define “express advocacy.”

(b) Threshold for PAC Registration/Reporting. There is no threshold for registering and reporting as a PAC (“permanent committee”). *Id.*; *see also id.* § 121.170 (registration) and 121.180(6) (reporting).

(c) Threshold for Disclosure of PAC Donors. A PAC must disclose donors who contribute in excess of \$100 during the reporting period. Ky. Rev. Stat. § 121.180(6)(b).

(d) Disclosure of Donors’ Employer Information on PAC Reports. Disclosure of donors’ employer information is required. *Id.*

IX. REGULATION OF “INCIDENTAL COMMITTEES”

Kentucky law does not appear to provide for incidental committees.

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X. PRIVATE ENFORCEMENT ACTIONS

Kentucky does not allow private enforcement actions. *See* Ky. Rev. Stat. § 121.140 (describing Campaign Finance Registry’s authority to investigate potential violations of campaign finance law).

XI. COORDINATION

(a) **“Content Prong.”** Kentucky’s coordinated expenditure regulation applies only to express advocacy. Ky. Rev. Stat. § 121.015(12). As discussed above in Section II, Kentucky does not separately define “express advocacy.”

(b) **Former Employee/Vendor “Conduct Prong.”** Kentucky’s coordination law does not specifically address former employees and vendors. *See id.*

(c) **Public Information Exemption.** Kentucky does not appear to have a public information exemption.

XII. LOBBYING

(a) **General Lobbyist/Lobbyist Principal Donor Disclosure.** Donor disclosure is not required on lobbying registrations or reports. *See* Ky. Rev. Stat. §§ 6.807 and 6.821; Ky. Admin. Regs. tit. 2, § 2:010.

(b) **Grassroots Lobbying.** The definitions of legislative and executive agency lobbying are limited to “direct communication” and appear to exclude grassroots activities. Ky. Rev. Stat. §§ 6.611(26)(a); 11A.201(9)(a). Although grassroots lobbying expenses related to executive agency decisions are not reportable, employers of registered legislative lobbyists must report certain grassroots lobbying expenses related to legislation. *Id.* § 6.821(4)(a)(5).

(c) **Forms of Grassroots Lobbying Communications Regulated.** N/A

(d) **Grassroots Lobbying Reference to Specific Legislation.** N/A

(e) **Grassroots Lobbying Registration and Reporting Thresholds.** N/A

(f) **Donor Disclosure for Grassroots Lobbying.** N/A

(g) **Earmarked Donor Disclosure for Grassroots Lobbying.** N/A

(h) **Donor Disclosure Threshold for Grassroots Lobbying (If Not Limited to Earmarked Donors).** N/A

(i) **Threshold Indexing (If Grassroots Lobbying Is Regulated).** N/A

LOUISIANA

I. FALSE POLITICAL SPEECH LAW

In Louisiana:

No person shall cause to be distributed, or transmitted, any oral, visual, or written material containing any statement which he knows or should be reasonably expected to know makes a false statement about a candidate for election in a primary or general election or about a proposition to be submitted to the voters.

La. Rev. Stat. § 18:1463(C)(1).

II. DEFINITION OF EXPENDITURE/EXPRESS ADVOCACY

An “expenditure” is defined, in relevant part, as any payment:

made for the purpose of supporting, opposing, or otherwise influencing the nomination or election of a person to public office, for the purpose of supporting or opposing a proposition or question submitted to the voters, or for the purpose of supporting or opposing the recall of a public officer, whether made before or after the election.

(However, IFS is aware that the U.S. Court of Appeals for the Fifth Circuit has limited the scope of Louisiana’s “expenditure” definition to *Buckley* express advocacy. *See Ctr. for Individ. Freedom v. Carmouche*, 449 F.3d 655 (5th Cir. 2006); *see also* La. Bd. of Ethics Docket No. 2014-1565 (Feb. 23, 2015).)

III. ELECTIONEERING COMMUNICATIONS

(a) Regulation of ECs. Louisiana regulates “electioneering communications.” *See* La. Rev. Stat. § 18:1463(C)(5).

(b) What Content Triggers Regulation as an Electioneering Communication. An EC is “any broadcast, cable, or satellite communication that refers to a legally qualified candidate for elected office and is broadcast within sixty days before any election in which such candidate is on the ballot.” *Id.*

(c) Types of Media Covered. Electioneering communications cover “broadcast, cable, or satellite communication[s].” *Id.*

(d) Reporting Threshold. There is no reporting requirement; ECs only trigger a disclaimer requirement. *See id.* § 18:1463(C)(1) and (2).

(e) Time Windows. An EC is “any broadcast, cable, or satellite communication that refers to a legally qualified candidate for elected office and is broadcast *within sixty days before any election* in which such candidate is on the ballot.” *Id.* § 18:1463(C)(5) (emphasis added).

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(f) Jurisdictional Limitation. The definition of an EC does not include a jurisdictional limitation. *See id.*

(g) Donor Disclosure. There is no reporting requirement; ECs only trigger a disclaimer requirement. *See id.* § 18:1463(C)(1) and (2).

(h) 501(c)(3) Exemption. There is no exemption for 501(c)(3) entities. *See id.* and *id.* § 18:1463(C)(5).

(i) Media Exemption. There is no media exemption. *See id.*

(Another provision in the disclaimers statute exempts “any radio station, television broadcast station, cable television company, or newspaper.” *Id.* § 18:1463(E). However, this exemption does not, on its face, apply specifically to the disclaimer requirement for ECs. *Compare id.* with *id.* § 18:1463(C)(1) and (2).)

(j) Other Exemptions. There are no other exemptions. *See id.*

IV. DONOR DISCLOSURE FOR INDEPENDENT EXPENDITURES MADE BY ENTITIES THAT ARE NOT PACS

(a) Donor Disclosure. Disclosure appears to be required for all donors, although an argument could be made that disclosure should be limited to donors of earmarked funds.

Sponsors of “expenditures” that are not candidates or PACs are required to file reports that “shall contain the same information . . . as reports required of political committees” for each reporting period in which the sponsor’s expenditures total more than \$500. *Id.* § 18:1501.1(B). PAC reports are required to disclose anyone “who has made one or more contributions.” *Id.* § 18:1491.7(B)(4)(a) (emphasis added). Arguably, the only donors who should be disclosed are those who give funds “made for the purpose of supporting, opposing, or otherwise influencing the nomination or election of a person to public office, for the purpose of supporting or opposing a proposition or question submitted to the voters, or for the purpose of supporting or opposing the recall of a public officer.” *See id.* § 18:1483(6)(a) (defining “contribution”) (emphasis added). However, the statute is unclear on this point.

(b) Threshold for Donor Disclosure. There is no monetary threshold for donor disclosure. *See id.* §§ 18:1501.1(B) and 18:1491.7(B)(4)(a).

There also does not appear to be any allowance under which donors may avoid disclosure if they prohibit their donations from being used to fund IEs, or whereby disclosure may be limited to donors to a segregated account that is used to fund IEs.

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V. DISCLAIMER REQUIREMENTS FOR INDEPENDENT EXPENDITURES AND ELECTIONEERING COMMUNICATIONS

(a) Form of Disclaimer. “Visual and oral political announcements or advertisements” are required to have a disclaimer that is “audible and visible.” *Id.* § 18:1463(E).

(b) Content of Disclaimer.

ECs. ECs must include a disclaimer with the following information if it is not “authorized” by any candidate:

it shall clearly state the (i) name, (ii) physical address (not post office box), and (iii) telephone number and the world-wide web address if available of the person, committee, entity or organization who paid for the communication and state that the communication is not authorized by any candidate or candidate committee. The name of the payer shall be given in full and no acronyms shall be used.

Id. § 18:1463(C)(2)(c).

General Disclaimer Requirements. In general, the Louisiana statute provides that:

No person shall cause to be distributed or transmitted for or on behalf of a candidate for political office any oral, visual, or written material constituting a paid political announcement or advertisement, which is paid for by a third-party entity, without providing *the name of the third-party entity on the face of the advertisement*. The name of the third-party entity shall be included on written material, political announcements, and advertisements so that it is clear and understandable. The name of the third-party entity in visual and oral political announcements or advertisements shall be included so that it is clearly understandable as well as audible and visible for not less than three seconds

Id. § 18:1463(E) (emphasis added).

The statute also provides that the sponsor of “any statements relative to candidates or propositions” must choose between either reporting as a PAC or including a disclaimer that “disclose[s] the name of the individual or the name of the association, organization, committee, or corporation, and the full and correct name and address of its chairman or other chief administrative officer and whether or not such individual, association, organization, committee, or corporation supports or opposes such candidate or proposition.” *Id.* § 18:1463(C)(3).

(c) Types of Media Covered.

- “any broadcast, cable, or satellite communication”;
- “any oral, visual, or written material.”

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Id. §§ 18:1463(C)(2)(c), (C)(5), and (E).

(d) Exceptions. The general disclaimer requirement at La. Rev. Stat. § 18:1463(E) does not apply to “any radio station, television broadcast station, cable television company, or newspaper.” As noted above in Section III(i), this exception does not, on its face, apply to the disclaimer requirement for ECs, nor does it apply to the general disclaimer requirement at La. Rev. Stat. § 18:1463(C)(3).

VI. STATUTORY OR REGULATORY AUTHORITY FOR SUPER PACS

The Louisiana statute does not specifically provide for super PACs. (IFS is aware, however, that the Louisiana Board of Ethics is complying with the ruling in *The Fund for Louisiana’s Future v. La. Bd. of Ethics*, Case No. 14-0368 (E.D. La. May 2, 2014), which permitted super PACs.)

VII. MAJOR/PRIMARY PURPOSE FOR PAC STATUS

PAC status is based on “the primary purpose” of an organization. La. Rev. Stat. § 18:1483(14)(a).

VIII. PAC STATUS DETERMINATION AND THRESHOLDS

(a) PAC Definition. A “committee” is defined in terms of accepting “contributions” and making “expenditures,” as well as making or receiving transfers to/from other committees and receiving or making “loans.” *Id.* A “loan” is defined as:

a transfer of money, property, or anything of value in exchange for an obligation to repay in whole or in part, made for the purpose of supporting, opposing, or otherwise influencing the nomination for election, or election, of any person to public office, for the purpose of supporting or opposing a proposition or question submitted to the voters, or for the purpose of supporting or opposing the recall of a public officer, whether made before or after the election.

Id. § 18:1483(10).

(As discussed above in Section II, however, Louisiana’s “expenditure” definition is very vague and broad.)

(b) Threshold for PAC Registration/Reporting. The threshold for PAC registration and reporting is accepting or making contributions, expenditures, covered transfers, or “loans” totaling more than \$500 in a calendar year. *Id.* § 18:1483(14)(a).

This threshold is not adjusted for inflation. *See id.*

(c) Threshold for Disclosure of PAC Donors. There is no monetary threshold for donor disclosure. *See id.* § 18:1491.7(B)(4)(a).

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(d) Disclosure of Donors' Employer Information on PAC Reports. Donors' employer information is not required. *See id.*

IX. REGULATION OF "INCIDENTAL COMMITTEES"

Louisiana does not regulate incidental committees.

X. PRIVATE ENFORCEMENT ACTIONS

Louisiana does not provide for private enforcement actions. *See id.* §§ 18:1511.4, 1511.4.1, 1511.5, and 1511.6 (providing for enforcement by the Board of Ethics, district attorneys, and state Attorney General).

XI. COORDINATION

(a) "Content Prong." Louisiana regulates as contributions any "*expenditures* made by any person in cooperation, consultation, or concert, with, or at the request or suggestion of, a candidate, his authorized political committees, or their agents." *Id.* § 18:1483(6)(b)(i). As discussed above in Section II, Louisiana has a very broad and vague definition of "expenditure." *See id.* 18:1483(9)(a).

(b) Former Employee/Vendor "Conduct Prong." Louisiana's coordination law does not specifically address former employees/common vendors. *See id.*

(c) Public Information Exemption. Louisiana's coordination law does not explicitly recognize a publicly available information exemption.

XII. LOBBYING

(a) General Lobbyist/Lobbyist Principal Donor Disclosure. Donor disclosure is not required on lobbying registrations or reports. *See id.* §§ 24:53, 49:74(A), 33:9664(A), 24:55, 49:76, and 33:9666.

(b) Grassroots Lobbying. "Lobbying" is defined in terms of "[a]ny direct act or communication" with a legislator or executive branch official," and does not appear to cover grassroots lobbying. *Id.* §§ 24:51(4) and 49:72(6).

(IFS has informally confirmed with the Louisiana Board of Ethics that grassroots lobbying is not regulated by the state.)

(c) Forms of Grassroots Lobbying Communications Regulated. N/A

(d) Grassroots Lobbying Reference to Specific Legislation. N/A

(e) Grassroots Lobbying Registration and Reporting Thresholds. N/A

LOUISIANA

(f) Donor Disclosure for Grassroots Lobbying. N/A

(g) Earmarked Donor Disclosure for Grassroots Lobbying. N/A

(h) Donor Disclosure Threshold for Grassroots Lobbying (If Not Limited to Earmarked Donors). N/A

(i) Threshold Indexing (If Grassroots Lobbying Is Regulated). N/A

MAINE

I. FALSE POLITICAL SPEECH LAW

Maine does not have a false political speech law.

II. DEFINITION OF EXPENDITURE/EXPRESS ADVOCACY

Maine has a vague definition of “expenditure” and defines “independent expenditures” using a *WRTL* functional equivalent standard. However, communications that refer to candidates within certain pre-election time windows are also presumed to be independent expenditures.

An “expenditure” is defined, in relevant part, as “[a] payment or promise of payment to a person contracted with *for the purpose of influencing* any campaign.” 21-A Me. Rev. Stat. § 1012(3)(A)(4) (emphasis added); *see also* 94-270 Me. Admin. Code § 1(10).

“For the purpose of influencing” does not appear to be further defined.

An “independent expenditure” is defined as “any expenditure made by a person, party committee, political committee or political action committee, other than by contribution to a candidate or a candidate's authorized political committee, for any communication that expressly advocates the election or defeat of a clearly identified candidate.” 21-A Me. Rev. Stat. § 1019-B(1)(A).

“Expressly advocate” is defined as “any communication that”:

(1) uses phrases such as “vote for the Governor,” “reelect your Representative,” “support the Democratic nominee,” “cast your ballot for the Republican challenger for Senate District 1,” “Jones for House of Representatives,” “Jean Smith in 2002,” “vote Pro-Life” or “vote Pro-Choice” accompanied by a listing of clearly identified candidates described as Pro-Life or Pro-Choice, “vote against Old Woody,” “defeat” accompanied by a picture of one or more candidate(s), “reject the incumbent,” or communications of campaign slogan(s) or individual word(s), which in context can have no other reasonable meaning than to urge the election or defeat of one or more clearly identified candidate(s), such as posters, bumper stickers, advertisements, etc. which say “Pick Berry,” “Harris in 2000,” “Murphy/Stevens” or “Canavan!”; or

(2) is susceptible of no reasonable interpretation other than as an appeal to vote for or against a clearly identified candidate.

94-270 Me. Admin. Code § 10(2)(B).

A “communication that names or depicts a clearly identified candidate and is disseminated during the 21 days, including election day, before a primary election; or the 35 days, including election day, before a general or special election” is presumed to be an independent expenditure (although this presumption, in theory, is “rebuttable”). 21-A Me. Rev. Stat. § 1019-B(1)(B).

MAINE

III. ELECTIONEERING COMMUNICATIONS

(a) **Regulation of ECs.** Maine effectively regulates electioneering communications under the “independent expenditure” definition discussed in Section II. *See id.*

(b) **What Content Triggers Regulation as an Electioneering Communication.** A communication is regulated if it: “names or depicts a clearly identified candidate and is disseminated during the 21 days, including election day, before a primary election; or the 35 days, including election day, before a general or special election” is presumed to be an independent expenditure. *Id.*

(c) **Types of Media Covered.** Maine’s IE/EC statute generally covers any type of “communication.” *Id.*

In addition, the IE/EC regulations provide that:

The following types of communications *may be covered* by the presumption [that a communication is an independent expenditure]:

- (1) Printed advertisements in newspapers and other media;
- (2) Television and radio advertisements;
- (3) Printed literature;
- (4) Recorded telephone messages;
- (5) Scripted telephone messages by live callers; and
- (6) Electronic communications.

This list is not exhaustive, and other types of communications may be covered by the presumption.

94-270 Me. Admin. Code § 10(5)(A) (emphasis added).

(d) **Reporting Threshold.** The threshold for reporting IEs/ECs is making “any expenditure in excess of \$250 during any one candidate’s election.”¹⁸ 21-A Me. Rev. Stat. § 1019-B(4).

(e) **Time Windows.** The time window is communications “disseminated during the 21 days, including election day, before a primary election; or the 35 days, including election day, before a general or special election.” *Id.* § 1019-B(1)(B).

(f) **Jurisdictional Limitation.** There is no jurisdictional limitation for IEs/ECs. *See id.*

(g) **Donor Disclosure.** Donor disclosure does not appear to be required on IE/EC reports. *See id.* § 1019-B(4)(B). (However, as discussed below, certain donor disclosure is required in disclaimers.)

¹⁸ An “election” is defined as “[t]he period of a primary election begins on the day a person becomes a candidate . . . and ends on the date of the primary election. The period of a general election begins on the day following the previous primary election and ends on the date of the general election.” 94-270 Me. Admin. Code § 1(9).

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(h) 501(c)(3) Exemption. There is no specific 501(c)(3) exemption for sponsors of IEs/ECs.

(i) Media Exemption. A media exemption applies for:

(1) Any news story, commentary or editorial distributed through the facilities of any broadcasting station, cable television system, newspaper, magazine or other periodical publication, unless the facilities are owned or controlled by any political party, political committee, candidate or spouse or domestic partner of a candidate;

(1-A) Any communication distributed through a public access television channel on a cable television system if the communication complies with the laws and rules governing the channel and all candidates in the race have an equal opportunity to promote their candidacies through the channel.

Id. § 1012(3)(B); *see also* 94-270 Me. Admin. Code § 10(5)(B)(1).

In addition, to qualify for this exemption, the following criteria also must be satisfied:

- “the names of the persons or entities who own, control and operate the broadcasting station or publication are identified within the publication or otherwise made known to the public”;
- “to qualify as a periodical publication, including one in electronic form on the Internet, or a newspaper or magazine, a publication (i) must have been disseminating news stories, commentaries or editorials on a variety of topics to the general public on a periodic basis for at least the previous twelve months, or (ii) must have a record of disseminating news stories, commentaries or editorials on a variety of topics to the general public or other objective indicators that the publication will continue to be published on a periodic basis beyond the election cycle during which the press exemption is claimed.”

94-270 Me. Admin. Code § 7(10).

(j) Other Exemptions. Other exemptions apply for:

(2) Activity or communication designed to encourage individuals to register to vote or to vote if that activity or communication does not mention a clearly identified candidate;

(3) Any communication by any membership organization or corporation to its members or stockholders, if that membership organization or corporation is not organized primarily for the purpose of influencing the nomination or election of any person to state or county office.

21-A Me. Rev. Stat. § 1012(3)(B).

B. A telephone survey that meets generally accepted standards for polling research and that is not conducted for the purpose of changing the voting position of the call recipients or discouraging them from voting;

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C. A telephone call naming a clearly identified candidate that identifies an individual's position on a candidate, ballot question or political party for the purpose of encouraging the individual to vote, as long as the call contains no advocacy for or against any candidate; and

D. A voter guide that consists primarily of candidates' responses to surveys and questionnaires and that contains no advocacy for or against any candidate.

Id. § 1019-B(5).

The following are not outright “exemptions” *per se*, but “will not be *presumed* to be independent expenditures”:

(2) activity or communication designed to encourage individuals to register to vote or to vote if that activity or communication does not name or depict a clearly identified candidate;

(4) the use of offices, telephones, computers, or similar equipment when that use does not result in additional cost to the provider.

94-270 Me. Admin. Code § 10(5)(B) (emphasis added).

IV. **DONOR DISCLOSURE FOR INDEPENDENT EXPENDITURES MADE BY ENTITIES THAT ARE NOT PACS**

Donor disclosure does not appear to be required on IE reports. *See* 21-A Me. Rev. Stat. § 1019-B(4)(B). (However, as discussed below, certain donor disclosure is required in disclaimers.)

V. **DISCLAIMER REQUIREMENTS FOR INDEPENDENT EXPENDITURES AND ELECTIONEERING COMMUNICATIONS**

(a) Form of Disclaimer. Form requirements only apply with respect to the top-3 donor disclosure component. *See* 21-A Me. Rev. Stat. § 1014. “A communication that contains a visual aspect” must include the top-3 donor information in writing, and a cable or broadcast television ad must include the top-3 donor information in both visually and audibly. *Id.* § 1014(2-B).

(b) Content of Disclaimer. An express advocacy communication or a communication that “names or depicts a clearly identified candidate” that is disseminated during the 21/35 days before a primary/general election must state the name and address of the sponsor, as well as whether the communication is or is not “authorized by a candidate” or “candidate’s authorized political committee.” *Id.* § 1014(1), (2), and (2-A). A radio ad is only required to include the sponsor’s city and state instead of the full address. *Id.*

Communications that name or depict candidates during the 21/35-day pre-election time windows are not required to include this disclaimer if they are “not made for the purpose of influencing the candidate’s nomination for election or election.” *Id.* § 1014(2-A).

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Robocalls and live calls that name or depict candidates during the 21/35-day pre-election time windows apparently are only required to state the name of the sponsor, and “calls made for the purpose of researching the views of voters” apparently are not required to include any disclaimers. *Id.* § 1014(5).

In addition, all communications that meet the definition of an “independent expenditure” and that cost more than \$250 must identify the “top 3 funders” who gave \$1,000 or more to the sponsor “since the day following the most recent general election day.” *Id.* § 1014(2-B) and 94-270 Me. Admin. Code § 7(12). Donors are not required to be included among a sponsor’s top-3 funders if their “funds were either spent in the order received or were strictly segregated in other accounts.” 21-A Me. Rev. Stat. § 1014(2-B)(E).

(c) Types of Media Covered. The disclaimer requirements apply to communications made through “broadcasting stations, cable television systems, newspapers, magazines, campaign signs or other outdoor advertising facilities, publicly accessible sites on the Internet, direct mails or other similar types of general public political advertising or through flyers, handbills, bumper stickers and other nonperiodical publications,” as well as to “[p]rerecorded automated telephone calls and scripted live telephone communications.” 21-A Me. Rev. Stat. § 1014(1) and (5).

(d) Exceptions. The following are exempt from the disclaimer requirements:

A. Handbills or other literature produced and distributed at a cost not exceeding \$100 and prepared by one or more individuals who are not required to register or file campaign finance reports with the commission and who are acting independently of and without authorization by a candidate, candidate's authorized campaign committee, party committee, political action committee or ballot question committee or an agent of a candidate, candidate's authorized campaign committee, party committee, political action committee or ballot question committee;

B. Campaign signs produced and distributed at a cost not exceeding \$100, paid for by one or more individuals who are not required to register or file campaign finance reports with the commission and who are acting independently of and without authorization by a candidate, candidate's authorized campaign committee, party committee, political action committee or ballot question committee or an agent of a candidate, candidate's authorized campaign committee, party committee, political action committee or ballot question committee;

C. Internet and e-mail activities costing less than \$100, as excluded by rule of the commission, paid for by one or more individuals who are not required to register or file campaign finance reports with the commission and who are acting independently of and without authorization by a candidate, candidate's authorized campaign committee, party committee, political action committee or ballot question committee or an agent of a candidate, candidate's authorized campaign committee, party committee, political action committee or ballot question committee;

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D. Communications in which the name or address of the person who made or authorized the expenditure for the communication would be so small as to be illegible or infeasible, including communications on items such as ashtrays, badges and badge holders, balloons, campaign buttons, clothing, coasters, combs, emery boards, envelopes, erasers, glasses, key rings, letter openers, matchbooks, nail files, noisemakers, paper and plastic cups, pencils, pens, plastic tableware, 12-inch or shorter rulers, swizzle sticks, tickets to fund-raisers and similar items determined by the commission to be too small and unnecessary for the disclosures required by this section and in electronic media advertisements where compliance with this section would be impractical due to size or character limitations; and

E. Campaign signs that are financed by the candidate or candidate's authorized committee and that clearly identify the name of the candidate and are lettered or printed individually by hand.

Id. § 1014(6).

In addition, for the top-3 funder component of the disclaimer requirements only, the top-3 funder component is not required if the inclusion of this information “would be impossible or impose an unusual hardship due to [the communication’s] format or medium.” 94-270 Me. Admin. Code § 7(12).

VI. STATUTORY OR REGULATORY AUTHORITY FOR SUPER PACS

Maine does not appear to provide for super PACs in its statute or regulations.

VII. MAJOR/PRIMARY PURPOSE FOR PAC STATUS

Maine regulates both “major purpose” and non-“major purpose” PACs.

A “political action committee” includes “[a]ny person, including any corporation or association, other than an individual, that has as *its major purpose* initiating or influencing a campaign and that receives contributions or makes expenditures aggregating more than \$1,500 in a calendar year for that purpose.” 21-A Me. Rev. Stat. § 1052(5)(A)(4) (emphasis added).

However, a PAC also includes “[a]ny person, other than an individual, that *does not have as its major purpose* influencing candidate elections but that receives contributions or makes expenditures aggregating more than \$5,000 in a calendar year for the purpose of influencing the nomination or election of any candidate to political office.” *Id.* § 1052(5)(A)(5) (emphasis added).

VIII. PAC STATUS DETERMINATION AND THRESHOLDS

(a) PAC Definition. Maine’s PAC definition covers “receiv[ing] contributions” and “mak[ing] expenditures.” *Id.* § 1052(5)(A)(4) and (5).

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(b) Threshold for PAC Registration/Reporting. The threshold for political committee regulation is receiving contributions or making expenditures aggregating more than \$1,500 in a calendar year for major purpose PACs and receiving contributions or making expenditures aggregating more than \$5,000 in a calendar year for non-major purpose PACs. *Id.*

This threshold does not appear to be adjusted for inflation. *See id.*

(c) Threshold for Disclosure of PAC Donors. Donors are required to be reported if they “have given more than \$50 to the political action committee in the reporting period.” *Id.* § 1060(6). Donors to non-major purpose committees are required to be disclosed for “only those contributions made to the organization *for the purpose of influencing a ballot question or the nomination or election of a candidate to political office.*” *Id.* (emphasis added). In other words, it appears that donors to non-major purpose committees are required to be disclosed only if they have given funds earmarked for political purposes.

(d) Disclosure of Donors’ Employer Information on PAC Reports. Donors’ employer information is required for anyone who is required to be disclosed. *Id.*

IX. REGULATION OF “INCIDENTAL COMMITTEES”

As discussed above in Section VIII, Maine regulates non-major purpose committees – specifically:

“[a]ny person, other than an individual, that *does not have as its major purpose* influencing candidate elections but that receives contributions or makes expenditures aggregating more than \$5,000 in a calendar year for the purpose of influencing the nomination or election of any candidate to political office.” *Id.* § 1052(5)(A)(5) (emphasis added).

X. PRIVATE ENFORCEMENT ACTIONS

Private lawsuits do not appear to be permitted to enforce Maine’s campaign finance laws; the Maine Commission on Governmental Ethics and Election Practices has primary investigative authority and may refer matters to the state Attorney General for enforcement. *See id.* § 1003; *see also* 94-270 Me. Admin. Code §§ 4(2) and 5.

XI. COORDINATION

(a) “Content Prong.” Maine’s coordination law covers “[a]ny expenditure.” 21-A Me. Rev. Stat. § 1015(5) and 94-270 Me. Admin. Code § 6(9).

(As discussed above in Section II, the definition of an “expenditure” is very vague and broad.)

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(b) Former Employee/Vendor “Conduct Prong.” The coordination rule covers persons who have served as employees or vendors of/to a candidate within the 12 months preceding the expenditure. 94-270 Me. Admin. Code § 6(9)(B)(1).

(c) Public Information Exemption. Maine does not have a public information exemption *per se*. “An expenditure will not be presumed to” be coordinated “*solely* because . . . the spender has obtained a photograph, biography, position paper, press release, logo, or similar material about the candidate from a publicly available source.” *Id.* § 6(9)(D)(1) (emphasis added). Thus, this is not a categorical exemption, but rather an exclusion from a “presum[ption]” of coordination.

XII. LOBBYING

(a) General Lobbyist/Lobbyist Principal Donor Disclosure. Lobbying reports are required to include the lobbyist “employer’s original sources” of funding. 3 Me. Rev. Stat. § 317(1)(J).

An “original source” is defined “any person who contributes or pays \$1,000 or more in any lobbying year directly or indirectly to any employer of a lobbyist for purposes of lobbying or indirect lobbying, except that contributions of membership dues to nonprofit corporations formed under Title 13-B, under any equivalent state law or by legislative enactment are not considered contributions by an original source.” *Id.* § 312-A(11-A).

(b) Grassroots Lobbying. Grassroots lobbying, on its own, does not trigger lobbying registration and reporting in Maine.

Lobbying is defined as communicating “*directly* with any official in the legislative branch or any official in the executive branch or with a constitutional officer for the purpose of influencing any legislative action or with the Governor or the Governor’s cabinet and staff for the purpose of influencing the approval or veto of a legislative action when reimbursement for expenditures or compensation is made for those activities.” *Id.* § 312-A(9).

(Guidance from the Maine Commission on Governmental Ethics and Election Practices supports this understanding. *See* Me. Comm’n on Gov’t Ethics and Election Practices, 2013 Guidebook for Maine Lobbyists, at 2, *available at* http://www.maine.gov/ethics/pdf/2013_lobbyist_guidebook_final_001.pdf. However, registered lobbyists are required to report grassroots lobbying costs. *See id.* (“The requirement to report indirect lobbying costs applies only to registered lobbyists.”).

(c) Forms of Grassroots Lobbying Communications Regulated. N/A

(d) Grassroots Lobbying Reference to Specific Legislation. N/A

(e) Grassroots Lobbying Registration and Reporting Thresholds. N/A

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(f) Donor Disclosure for Grassroots Lobbying. N/A

(g) Earmarked Donor Disclosure for Grassroots Lobbying. N/A

(h) Donor Disclosure Threshold for Grassroots Lobbying (If Not Limited to Earmarked Donors). N/A

(i) Threshold Indexing (If Grassroots Lobbying Is Regulated). N/A

MARYLAND

I. FALSE POLITICAL SPEECH LAW

Maryland does not appear to have a false political speech law.

II. DEFINITION OF EXPENDITURE/EXPRESS ADVOCACY

An “independent expenditure” means “a gift, transfer, disbursement, or promise of money or a thing of value by a person expressly advocating the success or defeat of a clearly identified candidate or ballot issue” that “is not made in coordination, cooperation, consultation, understanding, agreement, or concert with, or at the request or suggestion of, a candidate, a campaign finance entity of a candidate, an agent of a candidate, or a ballot issue committee.” Md. Elec. Code § 1-101(bb)(1).

Express advocacy is not further defined.

(Maryland’s PAC definition does not rely on the term “expenditure.” *See id.* § 1-101(gg). IFS is aware that Maryland’s “Commission to Study Campaign Finance” publicized a final report, in which it observed that independent expenditures in Maryland “are defined as express advocacy communications that explicitly urge the success or defeat of a clearly identified candidate . . . by using words such as ‘vote for,’ ‘vote against,’ ‘elect,’ ‘defeat,’ etc.” Comm’n to Study Campaign Finance Law, Final Report 16 (Dec. 31, 2012), <http://mgaleg.maryland.gov/Pubs/CommTFWorkgrp/2012-Campaign-Finance-Law-Final-Report.pdf>.)

III. ELECTIONEERING COMMUNICATIONS

(a) Regulation of ECs. Maryland regulates electioneering communications. Md. Elec. Code § 13-307.

(b) What Content Triggers Regulation as an Electioneering Communication. An electioneering communication is one that “refers to a clearly identified candidate or ballot issue.” *Id.* § 13-307(a)(3)(i)(1).

(c) Types of Media Covered. The definition of “electioneering communication” includes “a broadcast television or radio communication, a cable television communication, a satellite television or radio communication, a mass mailing, an e-mail blast, a text blast, a telephone bank, or an advertisement in a print publication.” *Id.* § 13-307(a)(3)(i).

(d) Reporting Threshold. The registration threshold is making aggregate disbursements of \$5,000 or more during “election cycle,” and the reporting threshold is making aggregate disbursements of \$10,000 or more during “election cycle.” *Id.* § 13-307(b), (c).

These thresholds are not indexed for inflation. *See id.*

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(An “election cycle” is defined as “the period that begins on the January 1 that follows a gubernatorial election and continues until the December 31 that is 4 years later.” *Id.* § 1-101(w).)

(e) Time Windows. The time window for electioneering communications is 60 days before an election. *Id.* § 13-307(a)(3)(i)(2).

(f) Jurisdictional Limitation. An electioneering communication must be “capable of being received by: A. 50,000 or more individuals in the constituency where the candidate or ballot issue is on the ballot, if the communication is transmitted by television or radio; or B. 5,000 or more individuals in the constituency where the candidate or ballot issue is on the ballot, if the communication is a mass mailing, an e-mail blast, a text blast, a telephone bank, or an advertisement in a print publication.” *Id.* § 13-307(a)(3)(i)(3).

(g) Donor Disclosure. The person making electioneering communications must disclose donors “who made cumulative donations of \$6,000 or more to the person making the disbursements for electioneering communications during the period covered by the report.” *Id.* § 13-307(e)(5).

Disclosure is not required provided:

A. that the donor and the person receiving the money or thing of value expressly agree in writing may not be used for electioneering communications; and

B. in the case of a monetary donation, is deposited in a separate bank account that is never used for electioneering communications.

Id. § 13-307(a)(2)(ii)(2).

(h) 501(c)(3) Exemption. There does not appear to be an exemption for 501(c)(3) groups.

(i) Media Exemption. The definition of electioneering communication excludes “a news story, a commentary, or an editorial disseminated by a broadcasting station, including a cable television operator, programmer, or producer, or satellite television or radio provider that is not controlled by a candidate or political party.” *Id.* § 13-307(a)(3)(ii)(2).

(j) Other Exemptions.

- An internal membership communication by a business or other entity to its stockholders or members and executive and administrative personnel and their immediate families, or by a membership entity to its members, executive and administrative personnel and their immediate families.
- A communication that proposes a commercial transaction.

Id. § 13-307(a)(3)(ii)(4), (5).

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IV. DONOR DISCLOSURE FOR INDEPENDENT EXPENDITURES MADE BY ENTITIES THAT ARE NOT PACS

(a) Donor Disclosure. General donor disclosure is required. IE reports must disclose “the identity of each person who made cumulative donations of \$6,000 or more to the person making the independent expenditures during the period covered by the report.” *Id.* § 13-306(e)(5).

Disclosure is not required provided:

A. that the donor and the person receiving the money or thing of value expressly agree in writing may not be used for electioneering communications; and

B. in the case of a monetary donation, is deposited in a separate bank account that is never used for electioneering communications.

Id. § 13-306(a)(2)(ii)(2).

(b) Threshold for Donor Disclosure. “[E]ach person who made cumulative donations of \$6,000 or more to the person making the independent expenditures during the period covered by the report” is required to be disclosed. *Id.* § 13-306(e)(5).

V. DISCLAIMER REQUIREMENTS FOR INDEPENDENT EXPENDITURES AND ELECTIONEERING COMMUNICATIONS

(a) Form of Disclaimer. Maryland does not require any particular form for disclaimers. *See* Md. Elec. Code § 13-401(a)(1).

(b) Content of Disclaimer. For entities that are not PACs, the disclaimer must include the name and address of the person responsible for the campaign material. If the campaign material has not been authorized by the candidate mentioned in the material, the disclaimer must state: “This message has been authorized and paid for by (name of payor or any organization affiliated with the payor), (name and title of treasurer or president). This message has not been authorized or approved by any candidate.” Md. Elec. Code § 13-401.

(c) Types of Media Covered. (k)(1) The disclaimer requirements cover “campaign material,” which is any material that: “(i) contains text, graphics, or other images; (ii) relates to a candidate, a prospective candidate, or the approval or rejection of a question or prospective question; and (iii) is published or distributed.” It includes: “(i) material transmitted by or appearing on the Internet or other electronic medium; and (ii) an oral commercial campaign advertisement.” Md. Elec. Code § 1-101(k).

(d) Exceptions. If the campaign material is too small to include all the required information, the material need only include the name and title of the treasurer or other person responsible for the material. *Id.* § 13-401(a)(3).

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VI. STATUTORY OR REGULATORY AUTHORITY FOR SUPER PACS

Maryland law does not expressly provide for Super PACs.¹⁹

VII. MAJOR/PRIMARY PURPOSE FOR PAC STATUS

“Political committee” means “a combination of two or more individuals that has as its major purpose promoting the success or defeat of a candidate, political party, question, or prospective question submitted to a vote at any election.” *Id.* § 1-101(gg).

VIII. PAC STATUS DETERMINATION AND THRESHOLDS

(a) **PAC Definition.** The definition of “political committee” is based on whether an organization “has as its major purpose *promoting the success or defeat* of a candidate, political party, question, or prospective question submitted to a vote at any election.” *See id.* (emphasis added).

(b) **Threshold for PAC Registration/Reporting.** There is no threshold for PAC registration and reporting. *Id.*

(c) **Threshold for Disclosure of PAC Donors.** There is no threshold for disclosure of donors. Md. Code Regs. 33.13.02.02(A).

(d) **Disclosure of Donors’ Employer Information on PAC Reports.** Disclosure of donors’ employer information is required for donors who contribute more than \$500 in an election cycle. *Id.* 33.13.02.02(A)(9), (E). However, a PAC may retain contributions if it has sent written requests for contributors’ employer information and the contributors fail to respond, provided that the PAC maintains documentation of such requests. *See id.*

IX. REGULATION OF “INCIDENTAL COMMITTEES”

Maryland law does not provide for incidental committees.

X. PRIVATE ENFORCEMENT ACTIONS

Maryland does not provide for private enforcement actions. *See* Md. Elec. Code § 13-604 (prosecution of civil offenses).

XI. COORDINATION

(a) **“Content Prong.”** Maryland’s coordination law covers any “public communication” that “promotes the success or defeat of a candidate or a political party at an election” or that republishes a candidate’s or political party’s campaign materials. Md. Elec. Code § 13-249(A)(4).

¹⁹ Maryland law addresses certain reporting requirements for a PAC “that exclusively makes [] independent expenditures,” but this provision does not otherwise specifically exempt such PACs from the contribution limits. *See id.* § 13-309.1(b).

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Maryland's coordination law also appears to cover "electioneering communications." *See id.* § 13-307(a)(3)(i)(4) (providing that an EC "is not made in coordination with, or at the request or suggestion of, a candidate, a campaign finance entity of a candidate, an agent of a candidate, or a ballot issue committee").

(b) Former Employee/Vendor "Conduct Prong." There is a rebuttable presumption of coordination if the sponsor of a covered communication employs or retains anyone who, during the preceding 18 months: (1) has served as a "responsible officer of a political committee affiliated with the candidate or political party that is the beneficiary" of the communication; (2) has served as a "strategic political campaign, media, or fund-raising advisor or consultant of the candidate or political party that is the beneficiary" of the communication; (3) has served as a "vendor, an advisor, or a consultant that, during the election cycle, has provided professional services to the candidate or political party that is the beneficiary" of the communication. *Id.* § 13-249(D).

(c) Public Information Exemption. Maryland does not have a public information exemption. *See id.*

XII. LOBBYING

(a) General Lobbyist/Lobbyist Principal Donor Disclosure. A lobbyist, not including an individual, "organized and operated for the primary purpose of attempting to influence legislative action or executive action," must file an additional report disclosing the name and address of each entity that provided 5% or more of the lobbyist's total receipts in the preceding 12 months. Md. Code, Gen. Prov. § 5-705(d).

(b) Grassroots Lobbying. The definition of "lobbyist" includes someone who spends at least \$2,000 during a reporting period "for the express purpose of soliciting others to communicate with an official to influence executive or legislative action." *Id.* § 5-702(a)(5).

(c) Forms of Grassroots Lobbying Communications Regulated. There are no particular forms of grassroots lobbying that are regulated. *See id.*

(d) Grassroots Lobbying Reference to Specific Legislation. Legislative action and executive action are defined broadly and would not limit coverage to specific pending legislation. *See id.* § 5-101(l), (v).

(e) Grassroots Lobbying Registration and Reporting Thresholds. There is a \$2,000 registration threshold. *Id.* § 5-702(a)(5).

(f) Donor Disclosure for Grassroots Lobbying. The reporting provision of § 5-705(d) discussed in Section XII(a) above is not limited to grassroots lobbying but may be triggered by grassroots lobbying.

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(g) Earmarked Donor Disclosure for Grassroots Lobbying. Disclosure is not limited to donors of funds earmarked for lobbying or grassroots lobbying. *See id.*

(h) Donor Disclosure Threshold for Grassroots Lobbying (If Not Limited to Earmarked Donors). If donor disclosure is required, each entity that provided 5% or more of the lobbyist's total receipts in the preceding 12 months must be disclosed. *See id.*

(i) Threshold Indexing (If Grassroots Lobbying Is Regulated). The threshold for lobbyist registration and reporting is not indexed for inflation.

MASSACHUSETTS

I. FALSE POLITICAL SPEECH LAW

In Massachusetts:

No person shall make or publish, or cause to be made or published, any false statement in relation to any candidate for nomination or election to public office, which is designed or tends to aid or to injure or defeat such candidate.

No person shall publish or cause to be published in any letter, circular, advertisement, poster or in any other writing any false statement in relation to any question submitted to the voters, which statement is designed to affect the vote on said question.

56 Mass. Gen. Laws § 42.

(IFS is aware that this law has been held to be unconstitutional. *See Commonwealth v. Lucas*, 472 Mass. 387 (2015).)

II. DEFINITION OF EXPENDITURE/EXPRESS ADVOCACY

An “expenditure” is defined, in relevant part, as “any expenditure of money, or anything of value . . . *for the purpose of influencing* the nomination or election of [a] candidate, or of presidential and vice presidential electors, or *for the purpose of promoting or opposing* a charter change, referendum question, constitutional amendment, or other question submitted to the voters.” 55 Mass. Gen. Laws § 1 (emphasis added).

An “independent expenditure” is defined, in relevant part as “an expenditure made . . . to *expressly advocate* the election or defeat of a clearly identified candidate.” *Id.* (emphasis added).

The terms “for the purpose of influencing” and “expressly advocate” are not defined.

III. ELECTIONEERING COMMUNICATIONS

(a) Regulation of ECs. Massachusetts regulates ECs. *Id.*

(b) What Content Triggers Regulation as an Electioneering Communication. A communication is regulated if it “refers to a clearly identified candidate.” *Id.*

(c) Types of Media Covered. ECs include “any broadcast, cable, mail, satellite or print communication.” *Id.*

(d) Reporting Threshold. The threshold for reporting ECs is making expenditures on ECs totaling more than \$250 during a calendar year. *Id.* § 18F.

(e) Time Windows. The time window is communications “distributed within 90 days before an election in which the candidate is seeking election or reelection.” *Id.* § 1.

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(f) Jurisdictional Limitation. There is no jurisdictional limitation for ECs. *See id.*

(g) Donor Disclosure. EC reports are required to disclose “the name and address of the provider of funds in excess of \$250, if any” if the sponsor “receives *funds to make electioneering communications*.” *Id.* § 18F.

Specifically:

If a donor to a tax exempt or other organization *knows* that a payment or thing of value it provides to the organization will be used to make . . . an electioneering communication referencing a Massachusetts candidate, the full amount of the donor's payment or donation to the organization shall be disclosed, if the aggregate value of the amount given by the donor exceeds \$250 during a calendar year, by the organization receiving the donation . . . a donor “knows” that a payment will be used to make a[n] electioneering communication, if the donor makes a contribution in response to a message or a solicitation indicating the organization's intent to make a[n] electioneering communication, or if other circumstances, including the timing and context of the donations, indicate that a donor knew that the payment would be used for such purpose.

970 Code of Mass. Regs. § 1.22(7) (emphasis added).

In short, donor disclosure is only required for donors of funds that are earmarked for ECs.

(h) 501(c)(3) Exemption. There is no specific 501(c)(3) exemption for sponsors of ECs.

(i) Media Exemption. A media exemption applies for “a news story, commentary, letter to the editor, news release, column, op-ed or editorial broadcast by a television station, radio station, cable television system or satellite system, or printed in a newspaper, magazine, or other periodical in general circulation.” 55 Mass. Gen. Laws § 1.

(j) Other Exemptions. Other exemptions apply for:

- (2) a communication to less than 100 recipients; . . .
- (5) a communication from a membership organization exclusively to its members and their families, otherwise known as a membership communication;
- (6) bonafide candidate debates or forums and advertising or promotion of the same;
- (7) email communications; and
- (8) internet communications which are not paid advertisements.

Id.

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IV. DONOR DISCLOSURE FOR INDEPENDENT EXPENDITURES MADE BY ENTITIES THAT ARE NOT PACS

Donor disclosure does not appear to be required on IE reports. *See id.* § 18A and 970 Mass. Code of Regs. § 2.17. (However, as discussed below, disclosure of certain donors is required in disclaimers.)

V. DISCLAIMER REQUIREMENTS FOR INDEPENDENT EXPENDITURES AND ELECTIONEERING COMMUNICATIONS

(a) Form of Disclaimer. TV ads must include “an unobscured, full-screen view” of an individual responsible for the ad who reads the disclaimer. *Id.* § 18G. Other disclaimer requirements follow the form of the ad. *Id.*

(b) Content of Disclaimer. TV, radio, and Internet IEs and ECs must include a statement by the individual sponsoring the ad (if the ad is paid for by the individual) stating that “he paid for the message and his city or town of residence.” If the ad is paid for by an organization, then the organization’s CEO, chairman, or “principal officer” must state: “I am _____ (name) the _____ (office held) of _____ (name of corporation, group, association or labor union) and _____ (name of corporation, group, association or labor union) approves and paid for this message.” *Id.*

IEs and ECs transmitted through TV, “internet advertising or print advertising” that are larger than 15 square inches, or that take up 15% or more of a computer screen with a 1366X768 resolution, must include a written statement at the bottom identifying the sponsor’s top-5 contributors who have given more than \$5,000 during the 12-month period prior to the date of the ad. *Id.*; 970 Code of Mass. Regs. § 2.20(3).

In addition, all IEs and ECs transmitted through “paid television or internet advertising” must include the written statement : “for more information, go to www.ocpf.us.” 55 Mass. Gen. Laws § 18G; 970 Code of Mass. Regs. § 2.20 (7).

(c) Types of Media Covered. The disclaimer requirements apply to “paid radio, television or internet advertising,” as well as “electronic ads sent in video format”²⁰ that uses 15% or more of a 1366X768 resolution screen, that meets the definition of an IE or EC. 55 Mass. Gen. Laws § 18G; 970 Code of Mass. Regs. § 2.20(3).

(d) Exceptions. The following are exempt from the disclaimer requirements:

- (a) Mailings;
- (b) Yard signs;
- (c) Billboards;
- (d) Door hangers, flyers, posters, buttons, and bumper stickers;
- (e) SMS texts;

²⁰ It is not clear whether such ads have to be paid.

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- (f) Emails, unless the email contains an advertisement that exceeds 15% of the computer screen (based on the standard display resolution of 1366x768);
- (g) Internet ads of limited size;
- (h) Telephone messages or electronic ads sent in audio format;
- (i) Radio ads;²¹ and
- (j) Membership communications.

970 Code of Mass. Regs. § 2.20(4)

VI. STATUTORY OR REGULATORY AUTHORITY FOR SUPER PACS

Massachusetts provides for super PACs in the form of “independent expenditure PACs,” which are not subject to contribution limits and may accept contributions from corporations. *Id.* § 2.17(4).

VII. MAJOR/PRIMARY PURPOSE FOR PAC STATUS

Massachusetts does not have any major or primary purpose limitation in its PAC definition.

A “political committee” is defined as:

any committee, association, organization or other group of persons, including a national, regional, state, county, or municipal committee, which receives contributions or makes expenditures for the purpose of influencing the nomination or election of a candidate, or candidates, or of presidential and vice presidential electors, or for the purpose of opposing or promoting a charter change, referendum question, constitutional amendment, or other question submitted to the voters.

55 Mass. Gen. Laws § 1.

(From the face of the statute, it appears that any organization that sponsors any IEs would be required to register and report as a PAC. However, the Massachusetts statute and regulations appear to contemplate that IE reports may be filed by entities that are not PACs. *Compare* 55 Mass. Gen. Laws § 18A(a) with *id.* § 18A(d), and 970 Code of Mass. Regs. § 2.17 (1) with *id.* § 2.17(5). IFS is aware that the Office of Campaign and Political Finance has advised that an organization that “does not indicate to donors that the funds may be used to influence state or local elections in Massachusetts, is generally not required to register as a political committee in Massachusetts. This is the case even if a portion of the funds raised in this manner by the organization may subsequently be . . . used by the organization itself to make independent expenditures in Massachusetts.” Mass. Ofc. of Campaign and Pol. Finance Adv. Op. 14-05 (Sep. 18, 2014). Thus, notwithstanding the statutory definition of a “political committee,” it appears that PAC status is triggered by whether an organization solicits or accepts earmarked contributions for Massachusetts political activity.)

²¹ This exemption to the disclaimer requirements appears to be in direct contradiction to the statute. *Compare* 55 Mass. Gen. Laws § 18G with 970 Code of Mass. Regs. § 2.20(4)(i).

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VIII. PAC STATUS DETERMINATION AND THRESHOLDS

(a) **PAC Definition.** Massachusetts’ PAC definition covers “receiv[ing] contributions or mak[ing] expenditures for the purpose of influencing the nomination or election of a candidate, or candidates, or of presidential and vice presidential electors, or for the purpose of opposing or promoting a charter change, referendum question, constitutional amendment, or other question submitted to the voters.” 55 Mass. Gen. Laws § 1.

(As discussed above in Section II, Massachusetts’ definition of an “expenditure” is vague and broad.)

(b) **Threshold for PAC Registration/Reporting.** There is no monetary threshold for registering and reporting as a PAC. *See id.* §§ 5 and 18.

(c) **Threshold for Disclosure of PAC Donors.** Donors are required to be reported if they have given more than a total of \$50 during the reporting period to the PAC. 55 Mass. Gen. Laws § 18(h)(2).

(d) **Disclosure of Donors’ Employer Information on PAC Reports.** Donors’ employer information is required for anyone who has given a total of \$200 or more during the calendar year. *Id.* § 18(h)(15). Employer information is not required to be reported if the PAC “has not been able to obtain such information” after having used “best efforts.” *Id.* and 970 Mass. Admin. Code § 1.08(2).

IX. REGULATION OF “INCIDENTAL COMMITTEES”

Massachusetts does not specifically regulate “incidental committees,” but may be said to regulate incidental committees to the extent its PAC definition has no major or primary purpose limitation, as discussed above in Section VII.

X. PRIVATE ENFORCEMENT ACTIONS

Any person may file a sworn complaint with a Massachusetts state district court “alleging that reasonable grounds exist for believing that any law relating to . . . primaries, caucuses, conventions and elections, or to any matters pertaining thereto, has been violated,” and the court may conduct an “inquest” (investigation). 55 Mass. Gen. Laws § 35.

XI. COORDINATION

(a) **“Content Prong.”** Massachusetts’ coordination law covers:

- Any communication that “expressly advocates the nomination, election or defeat of a clearly identified candidate or candidates”;
- An electioneering communication; and
- Any communication “that. . . taken as a whole, unambiguously urges a particular result in an election.”

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970 Mass. Admin. Code § 2.21(4).

As discussed above in Section II, “express advocacy” is not defined, and the “unambiguously urges a particular result in an election” content standard is also very vague.

(b) Former Employee/Vendor “Conduct Prong.” The coordination rule includes a rebuttable presumption of coordination if a “staff member who previously worked in a senior position or advisory capacity on the candidate's or officeholder's staff *within 90 days prior to the date of the election in which the expenditure is made*” is involved in the expenditure.” *Id.* § 2.21(6)(c) (emphasis added).

It appears that this 90-day pre-election time window necessarily would fall within the 120-day cooling-off period under the federal coordination rule.

(c) Public Information Exemption. Massachusetts’ coordination rule does not have a public information exemption. *See generally id.* § 2.21.

XII. LOBBYING

(a) General Lobbyist/Lobbyist Principal Donor Disclosure. Donor disclosure is not required on lobbying registrations or reports for entities that employ or retain a Massachusetts state lobbyist. 3 Mass. Gen. Laws §§ 41 and 43.

However, organizations that do not employ or retain Massachusetts state, but otherwise spend more than \$250 on Massachusetts state lobbying during a calendar year must report “the names and addresses of every person, group or organization from whom [\$15] or more was contributed during the year *for the objectives hereinabove stated*” (*i.e.*, for the “objective” of lobbying). *Id.* § 44 (emphasis added).

(b) Grassroots Lobbying. Massachusetts regulates grassroots lobbying.

For entities that do not employ or retain Massachusetts state lobbyists, registration and reporting is required if the entity spends more than \$250 during a calendar year:

to promote, oppose, or influence legislation, or the governor's veto or approval thereof, or to influence the decision of any officer or employee of the executive branch or an authority, including, but not limited to, statewide constitutional officers and employees thereof, where such decision concerns legislation or the adoption, defeat or postponement of a standard, rate, rule or regulation pursuant thereto, or to do any act to communicate directly with a covered executive official to influence a decision concerning policy or procurement.

Id.

(Sec’y of the Commw., Lobbyist Op. 98-2 confirms that grassroots lobbying is covered by these requirements.)

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(c) Forms of Grassroots Lobbying Communications Regulated. There are no particular forms of communications that are regulated as grassroots lobbying. *See id.*

(d) Grassroots Lobbying Reference to Specific Legislation. A reference to specific legislation is not required for a communication to be regulated as grassroots lobbying. *See id.*

(e) Grassroots Lobbying Registration and Reporting Thresholds. If an entity spends more than \$250 during a calendar year on grassroots lobbying, it is required to register and report. *Id.*

(f) Donor Disclosure for Grassroots Lobbying. As discussed above in Section XII(a), organizations that do not employ or retain Massachusetts state, but otherwise spend more than \$250 on Massachusetts state lobbying during a calendar year must report “the names and addresses of every person, group or organization from whom [\$15] or more was contributed during the year *for the objectives hereinabove stated*” (*i.e.*, for the “objective” of lobbying). *Id.* (emphasis added).

(g) Earmarked Donor Disclosure for Grassroots Lobbying. Donor disclosure appears to be limited to donors who have given funds earmarked for lobbying. *See id.*

(h) Donor Disclosure Threshold for Grassroots Lobbying (If Not Limited to Earmarked Donors). N/A

(i) Threshold Indexing (If Grassroots Lobbying Is Regulated). The thresholds for grassroots lobbying registration and reporting and donor disclosure are not indexed for inflation. *See id.*

MICHIGAN

I. FALSE POLITICAL SPEECH LAW

Michigan has a false political speech law. Mich. Comp. Laws § 168.931(3).

II. DEFINITION OF EXPENDITURE/EXPRESS ADVOCACY

An “independent expenditure” is “an expenditure by a person if the expenditure is not made in cooperation, consultation, or concert with, or at the request or suggestion of, a ballot question committee or a candidate, a candidate committee or its agents, or a political party committee or its agents.” *Id.* § 169.209(2).

An “expenditure” includes only those communications that “in express terms advocate the election or defeat of a clearly identified candidate so as to restrict the application of this act to communications containing express words of advocacy of election or defeat, such as ‘vote for’, ‘elect’, ‘support’, ‘cast your ballot for’, ‘Smith for governor’, ‘vote against’, ‘defeat’, or ‘reject’.” *Id.* § 169.206(2)(j).

III. ELECTIONEERING COMMUNICATIONS

(a) Regulation of ECs. Michigan does not regulate “electioneering communications” as such but does require disclaimers on any communication that “references a clearly identified candidate or ballot question.” *Id.* § 169.247(5)(a).

(Michigan has other disclaimer requirements for “a billboard, placard, poster, pamphlet, or other printed matter having reference to an election, a candidate, or a ballot question.” *Id.* § 169.247(1).)

(b) What Content Triggers Regulation as an Electioneering Communication. The disclaimer requirement applies to certain communications that “reference[] a clearly identified candidate or ballot question.” *Id.* § 169.247(5)(a).

(c) Types of Media Covered. The disclaimer requirement applies to any communication made “by means of radio, television, mass mailing, or prerecorded telephone message.” *Id.*

(d) Reporting Threshold. There is no reporting requirement, but there also is no monetary threshold for the disclaimer requirement. *See id.*

(e) Time Windows. The disclaimer requirement applies to communications made within 60 days before a general election or 30 days before a primary election in which the candidate or ballot question appears on a ballot. *See id.*

(f) Jurisdictional Limitation. The disclaimer requirement applies to communications “targeted to the relevant electorate where the candidate or ballot question appears on the ballot.” *See id.*

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(g) **Donor Disclosure.** The disclaimer requirement does not involve donor disclosure. *See id.*

(h) **501(c)(3) Exemption.** There is no specific exemption to the disclaimer requirement for 501(c)(3) sponsors of communications. *See id.*

(i) **Media Exemption.** There is no specific exemption to the disclaimer requirement for the media. *See id.*

(j) **Other Exemptions.** There are no other exemptions. *See id.*

IV. DONOR DISCLOSURE FOR INDEPENDENT EXPENDITURES MADE BY ENTITIES THAT ARE NOT PACS

(a) **Donor Disclosure.** IE reports must disclose “each person that contributed \$100.01 or more to the expenditure.” *Id.* § 169.251 (emphasis added). This disclosure requirement appears to be limited to donors of earmarked funds.

(Once a person has made independent expenditures of \$500 or more, that person must register as a political committee. *Id.* §§ 169.203(4), 169.224(1).)

(b) **Threshold for Donor Disclosure.** Disclosure is required for “each person who contributed \$100.01 or more to the expenditure.” *Id.* § 169.251.

V. DISCLAIMER REQUIREMENTS FOR INDEPENDENT EXPENDITURES AND ELECTIONEERING COMMUNICATIONS

(a) **Form of Disclaimer.** There are no particular form requirements for disclaimers. *Id.* § 169.247; Mich. Admin. Code r. 169.36.

(b) **Content of Disclaimer.** Depending on the precise type of communication or media involved, independent expenditures and electioneering communications typically require identifying the name and address of the payor as well as a disclaimer that the advertisement is not authorized by any candidate. *Id.*

(c) **Types of Media Covered.** The disclaimer requirements cover printed materials, radio, television, and pre-recorded telephone calls. *Id.*

(d) **Exceptions.** “A campaign item, the size of which makes it unreasonable to add an identification or disclaimer, or both, as designated by the secretary of state, is exempted from” the disclaimer requirements. Mich. Admin. Code r. 169.36(3).

VI. STATUTORY OR REGULATORY AUTHORITY FOR SUPER PACS

Michigan law recognizes Super PACs. *See* Mich. Comp. Laws § 169.224b.

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VII. MAJOR/PRIMARY PURPOSE FOR PAC STATUS

Michigan does not have a major or primary purpose test for PAC status. *See Mich. Comp. Laws § 169.203(4).*

VIII. PAC STATUS DETERMINATION AND THRESHOLDS

(a) PAC Definition. The definition of “committee” is based on receiving “contributions” or making “expenditures.” Mich. Comp. Laws § 169.203(4).

(b) Threshold for PAC Registration/Reporting. The threshold for PAC registration and reporting is receiving contributions or making expenditures totaling \$500 or more in a calendar year. *Id.*

This threshold is not indexed for inflation. *See id.*

(c) Threshold for Disclosure of PAC Donors. There is no threshold for disclosure of donors. *Id.* § 169.226(1)(e).

(d) Disclosure of Donors’ Employer Information on PAC Reports. Disclosure of donors’ employer information is required for donors who contribute more than \$100 in a reporting period. *Id.*

IX. REGULATION OF “INCIDENTAL COMMITTEES”

Michigan does not regulate “incidental committees” as such.

(However, as discussed above in Section VII, Michigan’s lack of a major/primary purpose limitation in its definition of a political committee essentially functions as a regulation of “incidental committees.” *See id.* § 169.203(4).)

X. PRIVATE ENFORCEMENT ACTIONS

Subject to a narrow exception for suits against public bodies, there is no private right of action for violating the state’s campaign finance laws. *Id.* §§ 169.215(17), 169.257(2).

XI. COORDINATION

(a) “Content Prong.” As discussed above in Section II, Michigan’s coordination law applies to “expenditures,” which are defined according to a *Buckley* express advocacy standard. *See id.* §§ 169.209(2) and 169.206(2)(j).

(b) Former Employee/Vendor “Conduct Prong.” Michigan’s coordination law implicitly suggests that former employees and vendors may cause a communication to be considered coordinated with a candidate. However, “[t]he independent nature of an independent expenditure is not defeated” if the former employee or vendor does not convey

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to the person making the IE or use in the making of the IE any information about a candidate's "campaign plans, projects, activities, or needs" that the former employee or vendor obtained from the candidate. *Id.* § 169.224c(2)(a). The Michigan coordination law does not specifically address any waiting periods for former employees and vendors. *See id.*

(c) Public Information Exemption. Michigan's coordination law does not provide for a public information exemption. *See id.*

XII. LOBBYING

(a) General Lobbyist/Lobbyist Principal Donor Disclosure. Donor disclosure does not appear to be required on lobbying registrations or reports. *See Mich. Comp. Laws §§ 4.417 and .418; Mich. Admin. Code r. 4.457.*

(b) Grassroots Lobbying. Based on the statutory definition of lobbying, grassroots lobbying does not appear to be regulated in Michigan.

"Lobbying" is defined as "*communicating directly* with an official in the executive branch of state government or an official in the legislative branch of state government for the purpose of influencing legislative or administrative action." Mich. Comp. Laws § 4.415(2) (emphasis added).

(c) Forms of Grassroots Lobbying Communications Regulated. N/A

(d) Grassroots Lobbying Reference to Specific Legislation. N/A

(e) Grassroots Lobbying Registration and Reporting Thresholds. N/A

(f) Donor Disclosure for Grassroots Lobbying. N/A

(g) Earmarked Donor Disclosure for Grassroots Lobbying. N/A

(h) Donor Disclosure Threshold for Grassroots Lobbying (If Not Limited to Earmarked Donors). N/A

(i) Threshold Indexing (If Grassroots Lobbying Is Regulated). N/A

MINNESOTA

I. FALSE POLITICAL SPEECH LAW

In Minnesota:

(a) A person is guilty of a gross misdemeanor who intentionally participates in the preparation, dissemination, or broadcast of paid political advertising or campaign material with respect to the personal or political character or acts of a candidate, or with respect to the effect of a ballot question, that is designed or tends to elect, injure, promote, or defeat a candidate for nomination or election to a public office or to promote or defeat a ballot question, that is false, and that the person knows is false or communicates to others with reckless disregard of whether it is false.

(b) A person is guilty of a misdemeanor who intentionally participates in the drafting of a letter to the editor with respect to the personal or political character or acts of a candidate, or with respect to the effect of a ballot question, that is designed or tends to elect, injure, promote, or defeat any candidate for nomination or election to a public office or to promote or defeat a ballot question, that is false, and that the person knows is false or communicates to others with reckless disregard of whether it is false.

Minn. Stat. § 211B.06.

(IFS is aware that this law has been held to be unconstitutional. *See 281 Care Comm. v. Arneson*, 766 F.3d 774 (8th Cir. 2014).)

II. DEFINITION OF EXPENDITURE/EXPRESS ADVOCACY

Minnesota does not clearly define the terms “expenditure” and “independent expenditure.”

An “expenditure” is defined as any payment “made or incurred *for the purpose of influencing* the nomination or election of a candidate or for the purpose of promoting or defeating a ballot question.” Minn. Stat. § 10A.01(9) (emphasis added).

An “independent expenditure” is defined, in relevant part, as “an expenditure *expressly advocating* the election or defeat of a clearly identified candidate, if the expenditure is made without the express or implied consent, authorization, or cooperation of, and not in concert with or at the request or suggestion of, any candidate or any candidate's principal campaign committee or agent.” *Id.* § 10A.01(18) (emphasis added).

“For the purpose of influencing” is not defined, and “expressly advocating” is defined circularly as “a communication [that] clearly identifies a candidate and uses words or phrases of express advocacy.” *Id.* § 10A.01(16a). “Express advocacy” is not further defined.

(IFS is aware that the Minnesota Campaign Finance and Public Disclosure Board appears to have interpreted “express advocacy” using a *Buckley* standard. *See* Minn. Campaign Fin. and Pub. Disclosure Bd., Handbook for Independent Expenditure and Ballot Question

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Political Committees and Funds (rev. Aug. 9, 2016) at 8, *available at* http://www.cfboard.state.mn.us/handbook/IE_BQ_comm_fund_handbook.pdf.)

III. ELECTIONEERING COMMUNICATIONS

Minnesota does not regulate ECs.

IV. DONOR DISCLOSURE FOR INDEPENDENT EXPENDITURES MADE BY ENTITIES THAT ARE NOT PACS

(a) Donor Disclosure. Donor disclosure is not necessarily limited to donors of earmarked funds (*i.e.*, general donor disclosure may apply).

A group that is not a PAC that spends more than \$1,500 in a calendar year on IEs must register a “political fund.” Minn. Stat. §§ 10A.12(1a) and 10A.14(1). A “political fund” must report “the name, address, employer, or occupation if self-employed . . . of each individual or association that has made one or more contributions *to the reporting entity* [*i.e.*, the “political fund”] . . . that in aggregate within the year exceed \$200 for legislative or statewide candidates or more than \$500 for ballot questions.” *Id.* § 10A.20(1) and (3)(c).

(As the Campaign Finance and Public Disclosure Board explains this requirement, “The money that constitutes a group's political fund may come from membership fees or dues collected by the group that created the fund or from *contributions to the group made specifically to influence candidate or ballot question elections.*” Minn. Campaign Fin. and Pub. Disclosure Bd., Handbook for Independent Expenditure and Ballot Question Political Committees and Funds (rev. Aug. 9, 2016) at 7 (emphasis added).)

However, if an organization deposits in its “political fund” “money derived from dues or membership fees,” it must “disclose the name of any member whose dues, membership fees, and contributions deposited in the political fund together exceed \$200 in a year.” Minn. Stat. § 10A.12(5).²²

(b) Threshold for Donor Disclosure. Donors are required to be disclosed if they have given more than \$200 during a calendar year to an organization’s “political fund” (or more than \$500 to support or oppose ballot measures), or more than \$200 during a calendar year if such moneys are deposited into the “political fund.” *Id.* and *id.* § 10A.20(1) and (3)(c).

As discussed above in Section IV(a), donor disclosure is generally limited to donors who contribute to an organization’s “political fund,” but if the organization deposits membership dues or fees into the “political fund,” the sources of those dues or fees also may be subject to disclosure.

²² In addition, note that certain additional second-level donor disclosure is required for “an association that has contributed more than \$5,000 in aggregate to independent expenditure political committees or funds during the calendar year or has contributed more than \$5,000 in aggregate to ballot question political committees or funds during the calendar year.” *Id.* § 10A.27(15)(b).

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V. DISCLAIMER REQUIREMENTS FOR INDEPENDENT EXPENDITURES AND ELECTIONEERING COMMUNICATIONS

(a) **Form of Disclaimer.** There are no particular form requirements for disclaimers. *Id.* § 10A.17(4).

(b) **Content of Disclaimer.** An IE must state that it “is an independent expenditure and is not approved by the candidate nor is the candidate responsible for it.” *Id.*

(c) **Types of Media Covered.** The disclaimer requirement applies to “written communications,” “oral communications,” and “broadcast advertisements.” *Id.*

(d) **Exceptions.** The following are exempt from the disclaimer requirements:

- IEs for which the sponsor is not required to register and report as a PAC or “political fund.” *Id.* § 10A.17(4)(b). As discussed above in Section IV(a), registration and reporting are not required if a sponsor does not spend more than \$1,500 in a calendar year on IEs.
- (1) bumper stickers, pins, buttons, pens, or similar small items on which the independent expenditure statement cannot be conveniently printed;

(2) skywriting, wearing apparel, or other means of displaying an advertisement of such a nature that the inclusion of the independent expenditure statement would be impracticable; and

(3) online banner ads and similar electronic communications that link directly to an online page that includes the independent expenditure statement. *Id.* § 10A.17(4)(c).

VI. STATUTORY OR REGULATORY AUTHORITY FOR SUPER PACS

Minnesota provides for super PACs in the form of “independent expenditure political committees,” which are not subject to contribution limits and may accept contributions from corporations. *Id.* §§ 10A.01(18a) and 10A.27(14) and (15).

VII. MAJOR/PRIMARY PURPOSE FOR PAC STATUS

A “political committee” is defined as “an association *whose major purpose* is to influence the nomination or election of one or more candidates or to promote or defeat a ballot question, other than a principal campaign committee or a political party unit.” *Id.* § 10A.01(27) (emphasis added).

VIII. PAC STATUS DETERMINATION AND THRESHOLDS

(a) **PAC Definition.** Minnesota’s PAC definition is not based on any activities that are clearly defined.

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A “political committee” is defined as “an association whose major purpose is *to influence the nomination or election of one or more candidates or to promote or defeat a ballot question*, other than a principal campaign committee or a political party unit.” *Id.* § 10A.01(27) (emphasis added).

(b) Threshold for PAC Registration/Reporting. In general, a PAC must register upon receiving contributions or making expenditures totaling more than \$750 (apparently over any period of time). *See id.* § 10A.14(1)(a)(1). However, an independent expenditure or ballot question PAC is required to register upon receiving contributions totaling more than \$1,500 in a calendar year, making IEs totaling more than \$1,500 in a calendar year, or making expenditures totaling more than \$5,000 in a calendar year “to promote or defeat a ballot question.” *Id.* § 10A.14(1a)(1).

These thresholds are not adjusted for inflation. *See id.* § 10A.14(1)(a)(1) and (1a)(1).

(c) Threshold for Disclosure of PAC Donors. Donors are required to be reported if they have given more than a total of \$200 during a calendar year with respect to legislative or statewide candidates, or more than a total of \$500 during a calendar year with respect to ballot questions. *Id.* § 10A.20(3)(c).

(d) Disclosure of Donors’ Employer Information on PAC Reports. Donors’ employer information is required. *See id.*

IX. REGULATION OF “INCIDENTAL COMMITTEES”

Minnesota does not regulate “incidental committees,” although the requirement discussed above in Section IV for sponsors of IEs that are not PACs to register and report as “political funds” arguably is a form of incidental committee regulation.

X. PRIVATE ENFORCEMENT ACTIONS

Minnesota does not provide for private enforcement actions for campaign finance violations.

A complaint alleging a violation of chapter 211A (Campaign Financial Reports) or 211B (Fair Campaign Practices Act) must be filed with the Office of Administrative Hearings. *Id.* § 211B.32(1)(a). County attorneys are authorized to prosecute any violation of the Fair Campaign Practices Act, but the complaint “must be finally disposed of by the [Office of Administrative Hearings] before the alleged violation may be prosecuted by a county attorney.” *Id.* §§ 211B.16(3), 211B.32(1)(a). Complaints alleging violations of other campaign finance laws must be filed with the Campaign Finance Board. *Id.* §§ 211B.32(1)(b) and 10A.022(3).

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XI. COORDINATION

(a) **“Content Prong.”** Minnesota’s coordination law regulates “an expenditure *expressly advocating* the election or defeat of a clearly identified candidate.” *Id.* § 10A.01(18) (emphasis added).

As discussed above in Section II, “express advocacy” is not defined.

(b) **Former Employee/Vendor “Conduct Prong.”** Minnesota’s coordination law does not address the use of former employees and vendors. *See id.*

(c) **Public Information Exemption.** Minnesota’s coordination law does not have a public information exemption. *See id.*

XII. LOBBYING

(a) **General Lobbyist/Lobbyist Principal Donor Disclosure.** Based on the statute, it appears that some disclosure of donors of earmarked funds is required.

Specifically, registered lobbyists are required to report “each original source of money in excess of \$500 in any year used for the purpose of lobbying.” *Id.* § 10A.04(4)(d). “Original source of funds” is defined as “a source of funds, other than the entity for which a lobbyist is registered, paid to the lobbyist, the lobbyist’s employer, the entity represented by the lobbyist, or the lobbyist’s principal, *for lobbying purposes.*” Minn. R. 4511.0100(5) (emphasis added).

(IFS is aware, however, that the Minnesota Campaign Finance and Public Disclosure Board has stated that broader, generalized donor disclosure is required for “those individuals whose aggregate contributions multiplied by the percentage of the budget of the lobbyist principal used for lobbying is greater than \$500. For example, a lobbyist principal uses 50% of its total budget for lobbying in Minnesota. If an individual or association contributed over \$1,000 to the lobbyist principal, the individual[] . . . must be disclosed to the Board.” Minn. Campaign Fin. and Pub. Disclosure Bd. Adv. Op. 336 (Jan. 25, 2002).)

(b) **Grassroots Lobbying.** Minnesota regulates grassroots lobbying.

Lobbying is defined as “attempting to influence legislative action, administrative action, or the official action of a metropolitan governmental unit by communicating with or *urging others to communicate with public officials* or local officials in metropolitan governmental units.” Minn. R. 4511.0100(3) (emphasis added).

In addition, an entity that does not employ or retain a lobbyist may nevertheless trigger lobbyist principal reporting requirements by engaging in “*efforts to influence* legislative action, administrative action, or the official action of metropolitan governmental units.” Minn. Stat. § 10A.01(33) (emphasis added).

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(c) Forms of Grassroots Lobbying Communications Regulated. There are no particular forms of communications that are regulated as grassroots lobbying. *See* Minn. R. 4511.0100(3) and Minn. Stat. § 10A.01(33).

(d) Grassroots Lobbying Reference to Specific Legislation. A reference to specific legislation is not required for a communication to be regulated as grassroots lobbying. *See id.*

(e) Grassroots Lobbying Registration and Reporting Thresholds. An individual who is engaged for pay or other consideration of more than \$3,000 in a year for lobbying, or who spends more than \$250 (excluding travel expenses and membership dues) in any year for lobbying, is required to register and report as a lobbyist. Minn. Stat. § 10A.01(21). An entity that does not employ or retain any individual lobbyists, but that spends \$50,000 or more in a calendar year on “efforts to influence legislative action, administrative action, or the official action of metropolitan governmental units,” is required to report as a lobbyist principal. *Id.* § 10A.01(33).

(f) Donor Disclosure for Grassroots Lobbying. As discussed above in Section XII(a), registered lobbyists are required to report “each original source of money in excess of \$500 in any year used for the purpose of lobbying.” *Id.* § 10A.04(4)(d). “Original source of funds” is defined as “a source of funds, other than the entity for which a lobbyist is registered, paid to the lobbyist, the lobbyist's employer, the entity represented by the lobbyist, or the lobbyist's principal, *for lobbying purposes.*” Minn. R. 4511.0100(5) (emphasis added).

(g) Earmarked Donor Disclosure for Grassroots Lobbying. Donor disclosure *appears* to be limited to donors who have given funds earmarked for lobbying. *See id.* (However, see parenthetical note in Section XII(a) above.)

(h) Donor Disclosure Threshold for Grassroots Lobbying (If Not Limited to Earmarked Donors). If disclosure is not limited to earmarked donors, donors are required to be disclosed if they have given more than \$500 in a calendar year to the organization. Minn. Stat. § 10A.04(4)(d).

(i) Threshold Indexing (If Grassroots Lobbying Is Regulated). The thresholds for lobbying registration and reporting and donor disclosure are not indexed for inflation. *See* Minn. Stat. §§ 10A.01(21) and (33), 10A.04(4)(d).

MISSISSIPPI

I. FALSE POLITICAL SPEECH LAW

Mississippi law provides that no person:

[S]hall publicly or privately make, in a campaign then in progress, any charge or charges reflecting upon the honesty, integrity or moral character of any candidate, so far as his private life is concerned, unless the charge be in fact true and actually capable of proof; and any person who makes any such charge shall have the burden of proof to show the truth thereof when called to account therefor under any affidavit or indictment against him for a violation of this section. Any language deliberately uttered or published which, when fairly and reasonably construed and as commonly understood, would clearly and unmistakably imply any such charge, shall be deemed and held to be the equivalent of a direct charge. And in no event shall any such charge, whether true or untrue, be made on the day of any election, or within the last five (5) days immediately preceding the date of any election.

Miss. Code § 23-15-875.

II. DEFINITION OF EXPENDITURE/EXPRESS ADVOCACY

An “expenditure” is defined as a payment “for the purpose of influencing” any election. *Id.* § 23-15-801(f)(i).

An “independent expenditure” is defined as an “expenditure by a person *expressly advocating* the election or defeat of a clearly identified candidate that is made without cooperation or consultation with the candidate or any authorized committee or agent of such candidate, and that is not made in concert with or at the request or suggestion of any candidate or any authorized committee or agent of the candidate.” *Id.* § 23-15-801(j).

“Expressly advocating” (including any of its grammatical variants) is not further defined.

(IFS is aware, however, that the U.S. Court of Appeals for the Fifth Circuit has held that Mississippi’s express advocacy standard must be applied consistently with the *Buckley* standard, and also has held that the “*Furgatch* test is too vague and reaches too broad an array of speech to be consistent with the First Amendment as interpreted in” *Buckley*. *Chamber of Commerce of the U.S. v. Moore*, 288 F.3d 187, 194-198 (5th Cir. 2002), *cert. denied*, 123 S. Ct. 536 (2002).)

III. ELECTIONEERING COMMUNICATIONS

Mississippi does not regulate ECs.

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IV. DONOR DISCLOSURE FOR INDEPENDENT EXPENDITURES MADE BY ENTITIES THAT ARE NOT PACS

(a) Donor Disclosure. Donor disclosure appears to be limited to donors of earmarked funds.

IE reports are required to disclose “each person who made a contribution in excess of Two Hundred Dollars (\$200.00) to the person filing such statement *which was made for the purpose of furthering an independent expenditure.*” Miss. Code § 23-15-809(b)(iii) (emphasis added).

(It is unclear, however, when sponsors of IEs would file IE reports and not report as PACs. The IE reporting requirement is triggered by making IEs totaling more than \$200 in a calendar year. *Id.* § 23-15-809(a). As discussed below in Sections VII and VIII, it appears that spending more than \$200 in a calendar year on IEs also would trigger PAC status. *See* Miss. Code § 23-15-801(c).)

(b) Threshold for Donor Disclosure. Donors are required to be disclosed if they have given more than \$200 (apparently over any period of time) “for the purpose of furthering an independent expenditure.” Miss. Code § 23-15-809(b)(iii).

V. DISCLAIMER REQUIREMENTS FOR INDEPENDENT EXPENDITURES AND ELECTIONEERING COMMUNICATIONS

(a) Form of Disclaimer. There are no particular form requirements for disclaimers. *Id.* §§ 23-15-899 (general disclaimer requirements) and -1025 (for judicial elections).

(b) Content of Disclaimer. Communications “having reference to any election, or to any candidate, that has not been submitted to, and approved and subscribed by a candidate” must state the “name and the address of the author and of the printer and publisher thereof.” *Id.* § 23-15-899.

Communications regarding judicial candidates must state “who has prepared that material and who is distributing the material,” whether “the material has been submitted to and approved by the candidate,” and if organizations or committees have been identified, the “identity of . . . all officers of the organizations or committees.” *Id.* § 23-15-1025.

(c) Types of Media Covered. The general disclaimer requirement applies to every “placard, bill, poster, pamphlet or other printed matter.” *Id.* § 23-15-899. The disclaimer requirement for communications regarding judicial candidates covers “any material.” *Id.* § 23-15-1025.

(d) Exceptions. There are no exceptions to these disclaimer requirements. *See id.* §§ 23-15-899 and -1025.

MISSISSIPPI

VI. STATUTORY OR REGULATORY AUTHORITY FOR SUPER PACS

Although Mississippi's statute does not appear to explicitly provide for super PACs, there are otherwise no limits on contributions to state PACs and corporations also are permitted to contribute to PACs.

(*See* Miss. Att'y Gen. Adv. Op., 1990 Miss. AG LEXIS 670 (Dec. 12, 1990) (explaining that corporations may contribute unlimited amounts to state PACs, provided that such contributions are not used "as a subterfuge" to circumvent the limits on direct contributions to candidates.)

VII. MAJOR/PRIMARY PURPOSE FOR PAC STATUS

Mississippi does not have any major or primary purpose limitation. *See* Miss. Code § 23-15-801(c).

VIII. PAC STATUS DETERMINATION AND THRESHOLDS

(a) PAC Definition. Mississippi's PAC definition is based on receiving "contributions" and "making expenditures."

A "political committee" is defined, in relevant part, as:

any committee, party, club, association, political action committee, campaign committee or other groups of persons or affiliated organizations that receives contributions aggregating in excess of Two Hundred Dollars (\$200.00) during a calendar year or that makes expenditures aggregating in excess of Two Hundred Dollars (\$200.00) during a calendar year for the purpose of influencing or attempting to influence the action of voters for or against the nomination for election, or election, of one or more candidates, or balloted measures . . .

Id.

(As discussed above in Section II, Mississippi has a very vague and broad definition of an "expenditure.")

(b) Threshold for PAC Registration/Reporting. A PAC must register upon receiving contributions or making expenditures totaling more than \$200 during a calendar year. *Id.* § 23-15-801(c).

This threshold is not adjusted for inflation. *See id.*

(c) Threshold for Disclosure of PAC Donors. Donors are required to be reported if they have given more than a total of \$200 during a calendar year. *Id.* § 23-15-807(d)(ii)(1).

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(d) Disclosure of Donors' Employer Information on PAC Reports. Donors' employer information is required. *See id. and id.* § 23-15-801(g)(i) (defining "identification").

IX. REGULATION OF "INCIDENTAL COMMITTEES"

Mississippi does not regulate "incidental committees," although, as discussed above in Section VII, the lack of any major or primary purpose limitation in its PAC definition arguably functions as a regulation of incidental committees.

X. PRIVATE ENFORCEMENT ACTIONS

Mississippi does not provide for private enforcement actions for campaign finance violations.

The Secretary of State, state Attorney General, and county election commissioners have exclusive jurisdiction over the state's campaign finance laws. *See id.* §§ 23-15-811, -813, and -903.

XI. COORDINATION

(a) "Content Prong." Mississippi's coordination law regulates an "expenditure by a person *expressly advocating* the election or defeat of a clearly identified candidate." *Id.* § 23-15-801(j) (emphasis added).

As discussed above in Section II, "express advocacy" is not defined.

(b) Former Employee/Vendor "Conduct Prong." Mississippi's coordination law does not address the use of former employees and vendors. *See id.*

(c) Public Information Exemption. Mississippi's coordination law does not have a public information exemption. *See id.*

XII. LOBBYING

(a) General Lobbyist/Lobbyist Principal Donor Disclosure. Donor disclosure is not required on lobbyist registrations and reports. *See id.* §§ 5-8-5, 5-8-9, and 5-8-11.

(b) Grassroots Lobbying. Mississippi regulates as lobbying the "[s]olicitation of others to influence legislative or executive action." *Id.* § 5-8-3(k). Thus, grassroots lobbying is regulated.

(c) Forms of Grassroots Lobbying Communications Regulated. There are no particular forms of communications that are regulated as grassroots lobbying. *See id.*

MISSISSIPPI

(d) Grassroots Lobbying Reference to Specific Legislation. A reference to specific legislation is not required for a communication to be regulated as grassroots lobbying. *See id.*

(e) Grassroots Lobbying Registration and Reporting Thresholds. There are no thresholds for lobbyist registration and reporting. *See id.* §§ 5-8-3(l) (defining “lobbyist”), 5-8-5(1) (registration), and 5-8-9 and 5-8-11 (reporting).

(f) Donor Disclosure for Grassroots Lobbying. As discussed above in Section XII(a), donor disclosure is not required on lobbyist registrations and reports. *See id.* §§ 5-8-5, 5-8-9, and 5-8-11.

(g) Earmarked Donor Disclosure for Grassroots Lobbying. N/A

(h) Donor Disclosure Threshold for Grassroots Lobbying (If Not Limited to Earmarked Donors). N/A

(i) Threshold Indexing (If Grassroots Lobbying Is Regulated). As discussed above in Section XII(e), there are no thresholds for lobbyist registration and reporting.

MISSOURI

I. FALSE POLITICAL SPEECH LAW

Missouri does not appear to have a false political speech law.

II. DEFINITION OF EXPENDITURE/EXPRESS ADVOCACY

An “expenditure” is a payment “for the purpose of *supporting or opposing* the nomination or election of any candidate for public office.” Mo. Rev. Stat. § 130.011(16) (emphasis added).

(IFS is aware that, in several enforcement matters, the Ethics Commission has confirmed that its definition of “expenditure” may extend to language that goes beyond explicit words of advocacy.)

III. ELECTIONEERING COMMUNICATIONS

Missouri law does not regulate electioneering communications.

IV. DONOR DISCLOSURE FOR INDEPENDENT EXPENDITURES MADE BY ENTITIES THAT ARE NOT PACS

Donor disclosure is not required on expenditure reports filed by sponsors that are not political committees. *See* Mo. Rev. Stat. § 130.047.

V. DISCLAIMER REQUIREMENTS FOR INDEPENDENT EXPENDITURES AND ELECTIONEERING COMMUNICATIONS –

(a) Form of Disclaimer. Printed materials require printed disclaimers, while there are no particular form requirements for broadcast ads. *See id.* § 130.031.8, .9, and .11.

(b) Content of Disclaimer. For “printed matter relative to any candidate for public office or any ballot measure,” the disclaimer must include the words “paid for by” followed by the “proper identification.” *Id.* § 130.031.8. With respect to a corporation, the “proper identification” means the name of the entity; the name of the principal officer of the entity, by whatever title known; and the mailing address of the entity, or if the entity has no mailing address, the mailing address of the principal officer. *Id.* § 130.031.8(3).

Broadcast ads are required to include the disclaimer required by FCC rules. *Id.* § 130.031.9 and .11.

(c) Types of Media Covered. The disclaimer requirements cover “any pamphlet, circular, handbill, sample ballot, advertisement, including advertisements in any newspaper or other periodical, sign, including signs for display on motor vehicles, or other imprinted or lettered material,” as well as broadcast ads. *Id.* §§ 130.031.8, .9, and .11.

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(d) Exceptions. Excluded from the disclaimer requirements is “any sign personally printed and constructed by an individual without compensation from any other person and displayed at that individual's place of residence or on that individual's personal motor vehicle; any items of personal use given away or sold, such as campaign buttons, pins, pens, pencils, book matches, campaign jewelry, or clothing, which is paid for by a candidate or committee which supports a candidate or supports or opposes a ballot measure and which is obvious in its identification with a specific candidate or committee and is reported as required by this chapter; and any news story, commentary, or editorial printed by a regularly published newspaper or other periodical without charge to a candidate, committee or any other person.” *Id.* § 130.031.8.

VI. STATUTORY OR REGULATORY AUTHORITY FOR SUPER PACS

Missouri does not expressly provide for super PACs. However, Missouri does not limit contributions to PACs, and imposes few source prohibitions on contributions to PACs. *See* Mo. Const. Art. VIII § 23.3(1)-(4) and (12) (providing that PACs “shall only receive contributions from individuals; unions; federal political action committees; and corporations, associations, and partnerships formed under chapters 347 to 360, [Mo. Rev. Stat.], as amended from time to time.”) Thus, Missouri law essentially permits super PACs in most respects, and is substantially similar to what is permitted under current federal law.

(IFS understands that there is pending litigation regarding whether banks may contribute to Missouri state PACs under the new source prohibitions.)

VII. MAJOR/PRIMARY PURPOSE FOR PAC STATUS

Missouri law defines a “committee” as “a person or any combination of persons, who accepts contributions or makes expenditures for *the primary or incidental purpose* of influencing or attempting to influence the action of voters for or against the nomination or election to public office of one or more candidates.” *Id.* § 130.011(7) (emphasis added).

However, there is an exception to the definition of “committee” for a “corporation [or] cooperative association, . . . organized or operated for *a primary or principal purpose* other than that of influencing or attempting to influence the action of voters for or against the nomination or election to public office of one or more candidates,” provided that “it accepts no contributions, and all expenditures it makes are from its own funds or property obtained in the usual course of business or in any commercial or other transaction and which are not contributions as defined by subdivision (12) of this section.” *Id.* § 130.011(7)(a)c.

VIII. PAC STATUS DETERMINATION AND THRESHOLDS

(a) PAC Definition. The definition of “committee” is based on receiving “contributions” or making “expenditures.” *Id.*

(As discussed above, Missouri’s definition of “expenditure” is very vague and broad.)

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(b) Threshold for PAC Registration/Reporting. The threshold for PAC registration and reporting is receiving contributions or making expenditures totaling more than \$500 during a calendar year, or receiving contributions totaling more than \$250 during a calendar year from a single contributor. *Id.* § 130.011(7)(a).

These thresholds are not adjusted for inflation. *See id.*

(c) Threshold for Disclosure of PAC Donors. There is no threshold for disclosure of donors. *Id.* § 130.041.1.

(d) Disclosure of Donors' Employer Information on PAC Reports. Disclosure of donors' employer information is required for donors who contribute more than \$100 in a reporting period. *Id.* § 130.041.1(3)(e).

(It appears that while “candidate committees” are only required to make a “reasonable effort” to obtain and report employer information for contributors who give more than a total of \$100 in a reporting period, employer information is absolutely required for other types of committees. *Compare id.* § 130.041.1(3)(a) (for candidate committees) with *id.* § 130.041.1(3)(e) (for other committees).)

IX. REGULATION OF “INCIDENTAL COMMITTEES”

As discussed above in Section VII, Missouri’s definition of “political committee” includes groups with the incidental purpose of influencing elections. *Id.* § 130.011(7).

X. PRIVATE ENFORCEMENT ACTIONS

Although the government has authority over most enforcement actions, *id.* §§ 105.957 and 105.961, there is a narrow exception whereby any person may file suit in circuit court to enforce state contribution limits, *id.* § 130.150(2).

XI. COORDINATION

(a) “Content Prong.” An “expenditure” is a contribution if the expenditure is made “in coordination or consultation with a candidate or committee.” Mo. Rev. Stat. § 130.047. As discussed above in Section II, Missouri defines an “expenditure” using a “*supporting or opposing*” standard. *Id.* § 130.011(16).

(b) Former Employee/Vendor “Conduct Prong.” Missouri’s coordination law does not specifically address the use of former employees or vendors. *See id.* § 130.047.

(c) Public Information Exemption. Missouri’s coordination law does not provide for a public information exemption. *See id.*

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XII. LOBBYING

(a) **General Lobbyist/Lobbyist Principal Donor Disclosure.** Donor disclosure is not required on lobbying registrations or reports. *See* Mo. Rev. Stat. § 105.473.

(b) **Grassroots Lobbying.** Based on the statutory lobbyist definitions, grassroots lobbying appears to be regulated in Missouri.

An “executive lobbyist” is defined as “any natural person who acts *for the purpose of attempting to influence* any action by the executive branch of government” *Id.* § 105.470(2). (emphasis added).

A “legislative lobbyist” is defined as “any natural person who acts *for the purpose of attempting to influence* the taking, passage, amendment, delay or defeat of any official action on any bill, resolution, amendment, nomination, appointment, report or any other action or any other matter pending or proposed in a legislative committee in either house of the general assembly, or in any matter which may be the subject of action by the general assembly and in connection with such activity” *Id.* § 105.470(5). (emphasis added).

(The General Counsel of the Missouri Ethics Commission informally has confirmed with IFS that the lobbyist definitions are broad enough that grassroots lobbying may trigger registration if it seeks to influence legislation or executive action and is disseminated widely.)

(c) **Forms of Grassroots Lobbying Communications Regulated.** There are no particular forms of grassroots lobbying that are regulated. *See id.* §§ 105.470(2) and (5).

(d) **Grassroots Lobbying Reference to Specific Legislation.** A reference to specific legislation does not appear to be required for an activity to be regulated as grassroots lobbying. *See id.*

(e) **Grassroots Lobbying Registration and Reporting Thresholds.** If grassroots lobbying is regulated, the threshold for registering and reporting as an executive branch lobbyist is based on whether an individual:

(a) Is acting in the ordinary course of employment on behalf of or for the benefit of such person's employer; or

(b) Is engaged for pay or for any valuable consideration for the purpose of performing such activity; or

(c) Is designated to act as a lobbyist by any person, business entity, governmental entity, religious organization, nonprofit corporation, association or other entity; or

(d) Makes total expenditures of fifty dollars or more during the twelve-month period beginning January first and ending December thirty-first for the benefit

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of one or more public officials or one or more employees of the executive branch of state government in connection with such activity.

Id. § 105.470(2).

The threshold for registering and reporting as a legislative branch lobbyist is based on substantially similar criteria. *See id.* § 105.470(5).

(IFS is aware that the Missouri Ethics Commission has attempted to regulate individuals as lobbyists even if they do not necessarily meet any of these criteria. *See Calzone v. Mo. Ethics Comm'n*, No. 2:16-cv-04278 (W.D. Mo. filed Oct. 21, 2016).

(f) Donor Disclosure for Grassroots Lobbying. As discussed above in Section XII(a), donor disclosure is not required. *See* Mo. Rev. Stat. § 105.473.

(g) Earmarked Donor Disclosure for Grassroots Lobbying. N/A

(h) Donor Disclosure Threshold for Grassroots Lobbying (If Not Limited to Earmarked Donors). N/A

(i) Threshold Indexing (If Grassroots Lobbying Is Regulated). Although not relevant to grassroots lobbying, the \$50 threshold for registering as a lobbyist by making expenditures to benefit public officials or employees is not indexed for inflation. *See id.* § 105.470(2)(d) and (5)(d).

MONTANA

I. FALSE POLITICAL SPEECH LAW

Montana has a false political speech law. *See* Mont. Code Ann. § 13-37-131.

In Montana:

(1) It is unlawful for a person to misrepresent a candidate's public voting record with knowledge that the assertion is false or with a reckless disregard of whether or not the assertion is false.

(2) It is unlawful for a person to misrepresent to a candidate another candidate's public voting record with knowledge that the assertion is false or with a reckless disregard of whether or not the assertion is false.

Id.

II. DEFINITION OF EXPENDITURE/EXPRESS ADVOCACY

Montana's definition of an "expenditure" includes electioneering communications, and that term potentially has a very broad definition. (See Section III below.)

An "expenditure" is "a purchase, payment, distribution, loan, advance, promise, pledge, or gift of money or anything of value: (i) made by a candidate or political committee to support or oppose a candidate or a ballot issue; or (ii) used or intended for use in making independent expenditures or in producing electioneering communications." *Id.* § 13-1-101(17).

"Support or oppose" means:

(a) using express words, including but not limited to "vote", "oppose", "support", "elect", "defeat", or "reject", that call for the nomination, election, or defeat of one or more clearly identified candidates, the election or defeat of one or more political parties, or the passage or defeat of one or more ballot issues submitted to voters in an election; or (b) otherwise referring to or depicting one or more clearly identified candidates, political parties, or ballot issues in a manner that is susceptible of no reasonable interpretation other than as a call for the nomination, election, or defeat of the candidate in an election, the election or defeat of the political party, or the passage or defeat of the ballot issue or other question submitted to the voters in an election.

Id. § 13-1-101(49).

An "independent expenditure" is "an expenditure for an election communication to support or oppose a candidate or ballot issue made at any time that is not coordinated with a candidate or ballot issue committee." *Id.* § 13-1-101(24).

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An “election communication” is defined as:

the following forms of communication to support or oppose a candidate or ballot issue: (i) a paid advertisement broadcast over radio, television, cable, or satellite; (ii) paid placement of content on the internet or other electronic communication network; (iii) a paid advertisement published in a newspaper or periodical or on a billboard; (iv) a mailing; or (v) printed materials.

Id. § 13-1-101(14)(a).

An “electioneering communication” is:

a paid communication that is publicly distributed by radio, television, cable, satellite, internet website, newspaper, periodical, billboard, mail, or any other distribution of printed materials, that is made within 60 days of the initiation of voting in an election, that does not support or oppose a candidate or ballot issue, that can be received by more than 100 recipients in the district voting on the candidate or ballot issue, and that: (i) refers to one or more clearly identified candidates in that election; (ii) depicts the name, image, likeness, or voice of one or more clearly identified candidates in that election; or (iii) refers to a political party, ballot issue, or other question submitted to the voters in that election.

Id. § 13-1-101(15)(a).

III. ELECTIONEERING COMMUNICATIONS

(a) Regulation of ECs. Montana regulates “electioneering communications.” *See id.*

(b) What Content Triggers Regulation as an Electioneering Communication. A communication is regulated if it: “(i) refers to one or more clearly identified candidates in that election; (ii) depicts the name, image, likeness, or voice of one or more clearly identified candidates in that election; or (iii) refers to a political party, ballot issue, or other question submitted to the voters in that election.” *Id.* § 13-1-101(15)(a).

(c) Types of Media Covered. Electioneering communications cover any “paid communication that is publicly distributed by radio, television, cable, satellite, internet website, newspaper, periodical, billboard, mail, or any other distribution of printed materials.” *Id.*

(d) Reporting Threshold. The threshold for reporting (as an “incidental committee” making expenditures electioneering communications) is making an expenditure of more than \$250. *See id.* and *id.* §§ 13-1-101(17) (defining “expenditure”) and 13-1-101(30)(a)(iii) (defining “political committee”); Admin. Rules of Mont. § 44.11.202(3)(b) (setting forth a \$250 threshold for political committee status).

(e) Time Windows. The time window is communications “made within 60 days of the initiation of voting in an election.” *Id.* § 13-1-101(15).

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(f) Jurisdictional Limitation. Electioneering communications are those that “can be received by more than 100 recipients in the district voting on the candidate or ballot issue.” *Id.*

(g) Donor Disclosure. General donor disclosure may be required if the sponsor does not qualify as an “incidental committee,” and the standard separating an “incidental committee” and an “independent committee” requiring general donor disclosure also is quite vague. *See id.* §§ 13-1-101(22) (defining “incidental committee”), (23) (defining “independent committee”), (30)(a)(iii) (defining “political committee”); 13-37-225 and -229 (reporting requirements for independent committees); *see also* Admin. Rules of Mont. § 44.11.203 (defining “primary purpose”).

There also does not appear to be any allowance under which donors may avoid disclosure if they prohibit their donations from being used to fund ECs, or whereby disclosure may be limited to donors to a segregated account that is used to fund ECs.

(h) 501(c)(3) Exemption. There is no specific 501(c)(3) exemption for sponsors of electioneering communications.

(i) Media Exemption. A media exemption applies for:

a bona fide news story, commentary, blog, or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, internet website, or other periodical publication of general circulation unless the facilities are owned or controlled by a candidate or political committee.

Id. § 13-1-101(15)(b)(i).

(j) Other Exemptions. Other exemptions apply for:

(ii) a communication by any membership organization or corporation to its members, stockholders, or employees; (iii) a commercial communication that depicts a candidate's name, image, likeness, or voice only in the candidate's capacity as owner, operator, or employee of a business that existed prior to the candidacy; (iv) a communication that constitutes a candidate debate or forum or that solely promotes a candidate debate or forum and is made by or on behalf of the person sponsoring the debate or forum; or (v) a communication that the commissioner determines by rule is not an electioneering communication.

Id. § 13-1-101(15)(b)(ii)-(v).

In addition, “an electioneering communication does not mean”:

(a) a communication that refers to or depicts the name, image, likeness, or voice of one or more clearly identified candidates, but that is susceptible to no reasonable interpretation other than as unrelated to the candidacy or the election;

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(b) a communication that refers to a political party, ballot issue, or other question submitted to the voters at an election, but that is susceptible to no reasonable interpretation other than as unrelated to the issue or the election;

(c) the voter information pamphlet prepared and distributed by the Secretary of State; or

(d) any other regular or normal communication by a local government or a state agency that includes information about a candidate, ballot issue, or election. A communication concerning a bond issue by local government or a state agency is not regular and normal communication and is subject to reporting and disclosure as an electioneering communication. For purposes of this rule the terms local government and state agency shall have the same meaning as the definitions of the terms in 2-2-102, MCA.

Admin. Rules of Mont. § 44.11.605(3).

Provided, however, that: “The determination whether a particular communication is an electioneering communication or is excluded from the definition of the term *will be based on the purpose, timing, and distribution of the communication.*” *Id.* § 44.11.605(5) (emphasis added).

IV. **DONOR DISCLOSURE FOR INDEPENDENT EXPENDITURES MADE BY ENTITIES THAT ARE NOT PACS**

(a) Donor Disclosure. Donor disclosure on IE reports is required for earmarked donations.

Donor disclosure is required for IE sponsors that qualify as an “incidental committee” (but not as an “independent committee”) for donors who have made “contributions to the committee that are designated by the contributor for a specified candidate, ballot issue, or petition for nomination or that are made by the contributor in response to an appeal by the incidental committee for contributions to support incidental committee election activity, including in-kind expenditures, independent expenditures, election communications, or electioneering communications.” *See* Mont. Code Ann. §§ 13-1-101(22) (defining “incidental committee”), (23) (defining “independent committee”), (30)(a)(iii) (defining “political committee”); 13-37-225 and -232 (reporting requirements for incidental committees).

(b) Threshold for Donor Disclosure. If donor disclosure is required, the threshold is anyone who has “made aggregate contributions during the reporting period . . . of \$35 or more.” *Id.* § 13-37-232(a).

V. **DISCLAIMER REQUIREMENTS FOR INDEPENDENT EXPENDITURES AND ELECTIONEERING COMMUNICATIONS**

(a) Form of Disclaimer. Disclaimers for “election communications,” IEs, and ECs generally must be written. Admin. Rules of Mont. § 44.11.601(3)(a).

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Disclaimers for communications containing audio content must be spoken. *Id.* § 44.11.601(3)(b)(i).

Disclaimers for communications containing “visual content” must be displayed visually, and a simultaneous audio disclaimer also may be spoken but is not required. *Id.* § 44.11.601(3)(b)(ii).

(b) Content of Disclaimer. Disclaimers for “election communications,” IEs, and ECs must include the words “paid for by,” and if the sponsor is any form of political committee, the name of the committee, the name of the committee treasurer, and the address of either the committee or its treasurer. *Id.* § 44.11.601(2) and (2)(b)(i). If the political committee is also a corporation or union, the disclaimer must include the name of the sponsor, the name of the CEO or equivalent position, and the physical address of the sponsor’s principal place of business. *Id.* § 44.11.601(2) and (2)(c)(i).

Moreover, any printed communication:

that includes information about another candidate's voting record must include the following: (i) a reference to the particular vote or votes upon which the information is based; (ii) a disclosure of all votes made by the candidate on the same legislative bill or enactment; and (iii) a statement, signed as provided in subsection (3)(b), that to the best of the signer's knowledge, the statements made about the other candidate's voting record are accurate and true. (b) The statement required under subsection (3)(a) must be signed: (i) by the candidate if the election material was prepared for the candidate and includes information about another candidate's voting record; or (ii) by the person financing the communication or the person's agent if the election material was not prepared for a candidate.

Mont. Code Ann. § 13-35-225(3).

(c) Types of Media Covered. The disclaimer requirement applies to communications “broadcast over radio, television, cable, or satellite; (ii) paid placement of content on the internet or other electronic communication network; (iii) a paid advertisement published in a newspaper or periodical or on a billboard; (iv) a mailing; or (v) printed materials,” as well as internet websites.

Id. § 13-1-101(14)(a) (defining “election communication”), (15)(a) (defining “electioneering communication”), and (24) (defining “independent expenditure”).

(d) Exceptions. The following are exempt from the disclaimer requirements:

For “election communications” and “independent expenditures”:

(i) an activity or communication for the purpose of encouraging individuals to register to vote or to vote, if that activity or communication does not mention or depict a clearly identified candidate or ballot issue; (ii) a communication that does not support or oppose a candidate or ballot issue; (iii) a bona fide

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news story, commentary, blog, or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, internet website, or other periodical publication of general circulation; (iv) a communication by any membership organization or corporation to its members, stockholders, or employees;

For “electioneering communications”:

(i) a bona fide news story, commentary, blog, or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, internet website, or other periodical publication of general circulation unless the facilities are owned or controlled by a candidate or political committee; (ii) a communication by any membership organization or corporation to its members, stockholders, or employees; (iii) a commercial communication that depicts a candidate's name, image, likeness, or voice only in the candidate's capacity as owner, operator, or employee of a business that existed prior to the candidacy; (iv) a communication that constitutes a candidate debate or forum or that solely promotes a candidate debate or forum and is made by or on behalf of the person sponsoring the debate or forum;

Id.

In addition, any communications “that are too small for the inclusion” of the required disclaimers are exempt, but a copy of the material must be filed with the Commissioner of Political Practices along with the identifying information required in the disclaimers at or before the date and time the material is publicly distributed. Admin. Rules of Mont. § 44.11.601(6).

VI. STATUTORY OR REGULATORY AUTHORITY FOR SUPER PACS

Montana’s statute covers super PACs under the “independent committee” definition. *See* Mont. Code Ann. § 13-1-101(23).

VII. MAJOR/PRIMARY PURPOSE FOR PAC STATUS

Montana has a vague “primary purpose” standard which is used to distinguish between an “incidental committee” and an “independent committee.” *See id.* § 13-1-101(22) (defining “incidental committee”) and Admin. Rules of Mont. § 44.11.203 (defining “primary purpose”).

VIII. PAC STATUS DETERMINATION AND THRESHOLDS

(a) PAC Definition. Montana’s PAC definition covers expenditures as well as electioneering communications.

A “political committee” is:

a combination of two or more individuals or a person other than an individual who receives a contribution or makes an expenditure: (i) to support or oppose

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a candidate or a committee organized to support or oppose a candidate or a petition for nomination; (ii) to support or oppose a ballot issue or a committee organized to support or oppose a ballot issue; or (iii) to prepare or disseminate an election communication, an electioneering communication, or an independent expenditure.

Mont. Code Ann. § 13-1-101(30)(a).

An “incidental committee” becomes subject to more extensive reporting (including generalized donor disclosure) as an “independent committee” if it is “organized for the primary purpose of receiving contributions and making [independent] expenditures.” *Id.* § 13-1-101(22)(a).

(b) Threshold for PAC Registration/Reporting. The threshold for political committee regulation is making an expenditure of more than \$250. Admin. Rules of Mont. § 44.11.202(3)(b).

This threshold does not appear to be adjusted for inflation. *See id.*

(c) Threshold for Disclosure of PAC Donors. Donors to an incidental or independent committee are required to be disclosed if they make contributions totaling \$35 or more during the reporting period. Mont. Code Ann. §§ 13-37-229(1)(b) and -232(1)(a).

(d) Disclosure of Donors’ Employer Information on PAC Reports. Donors’ employer information is required for anyone who has given a total of more than \$35 to the PAC during the reporting period. *Id.*

IX. REGULATION OF “INCIDENTAL COMMITTEES”

Montana regulates “incidental committees.”

An “incidental committee” is defined as “a political committee that is not specifically organized or operating for the primary purpose of supporting or opposing candidates or ballot issues but that may incidentally become a political committee by receiving a contribution or making an expenditure.” *Id.* § 13-1-101(22)(a).

Donor disclosure is required for IE sponsors that qualify as an “incidental committee” but not as an “independent committee” for donors who have made “contributions to the committee that are designated by the contributor for a specified candidate, ballot issue, or petition for nomination or that are made by the contributor in response to an appeal by the incidental committee for contributions to support incidental committee election activity, including in-kind expenditures, independent expenditures, election communications, or electioneering communications.” *See* Mont. Code Ann. §§ 13-1-101(22) (defining “incidental committee”), (23) (defining “independent committee”), (30)(a)(iii) (defining “political committee”); 13-37-225 and -232 (reporting requirements for incidental committees).

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In other words, for incidental committees, disclosure is required for donors who give contributions earmarked for independent expenditures, election communications, or electioneering communications. However, the generalized donor disclosure requirement for independent committees does not appear to apply to incidental committees.

X. PRIVATE ENFORCEMENT ACTIONS

Private lawsuits do not appear to be permitted to enforce Montana's campaign finance laws; the Commissioner of Political Practices has primary enforcement authority. *See id.* § 13-37-112(1); *see also* Admin. Rules of Mont. §§ 44.11.101(2)(a) and .240(1)(h).

XI. COORDINATION

(a) “Content Prong.” An independent expenditure is defined in reference to an “election communication” that is not coordinated with a candidate or ballot committee. Mont. Code Ann. § 13-1-101(23).

(As discussed above in Section II, the definition of an “election communication” uses the “support or oppose” standard, which in turn appears to capture the *Buckley* and *WRTL* express advocacy standards.)

(b) Former Employee/Vendor “Conduct Prong.” The coordination rule covers any vendors and employees of the candidate or agent of the candidate within the 6 months prior to the expenditure. Admin. Rules of Mont. § 44.11.602(2)(c).

(c) Public Information Exemption. Montana does not appear to explicitly recognize a publicly available information exemption in its coordination rules.

XII. LOBBYING

(a) General Lobbyist/Lobbyist Principal Donor Disclosure. Donor disclosure is required on lobbyist principal's/employer's reports for any “contribution [or] membership fee that amounts to \$250 or more when aggregated over the period of 1 calendar year paid to the principal for the purpose of lobbying.”

A contribution or membership fee is reportable if it is:

- (a) solicited by the recipient to be used primarily for payment of lobbying expenses;
- (b) paid to a group formed or existing primarily for the purpose of lobbying; or
- (c) earmarked or intended by the donor to be used for payment of lobbying expenses.

Mont. Code Ann. § 5-7-208(5); Admin. Rules of Mont. § 44.12.201.

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(b) Grassroots Lobbying. It is unclear from the statutory definition of lobbying whether grassroots lobbying is covered in Montana. Based on informal and formal guidance from the Commissioner of Political Practices, IFS is aware that some forms of what are commonly considered to be grassroots lobbying are regulated as lobbying, while other forms of grassroots lobbying are not regulated by the Commissioner.

“Lobbying” is defined as:

- (i) the practice of promoting or opposing the introduction or enactment of legislation before the legislature or legislators; and
- (ii) the practice of promoting or opposing official action of any public official or the legislature.

Mont. Code Ann. § 5-7-102(11).

(c) Forms of Grassroots Lobbying Communications Regulated. If grassroots lobbying is covered, the statute does not specify any particular forms of lobbying communications that are regulated. *See id.*

(d) Grassroots Lobbying Reference to Specific Legislation. If grassroots lobbying is covered, the definition of lobbying does not appear to require reference to specific legislation in order for a communication to be regulated as lobbying. *See* Section XII(b), *supra*.

(e) Grassroots Lobbying Registration and Reporting Thresholds. If grassroots lobbying is covered, registration is required for individuals engaged in lobbying who receive payments totaling \$2,500 or more in a calendar year, and entities that make lobbying expenditures exceeding \$2,500 during a calendar year are required to report. Mont. Code §§ 5-7-102(12), -208, and -112.

(f) Donor Disclosure for Grassroots Lobbying. If grassroots lobbying is covered, donor disclosure is required on lobbying reports. *See* Section XII(a), *supra*.

(g) Earmarked Donor Disclosure for Grassroots Lobbying. If grassroots lobbying is covered, donor disclosure is limited to donors of earmarked donations. *See* Section XII(a), *supra*.

(h) Donor Disclosure Threshold for Grassroots Lobbying (If Not Limited to Earmarked Donors). N/A

(i) Threshold Indexing (If Grassroots Lobbying Is Regulated). All thresholds for lobbying registration and reporting are indexed for inflation. Mont. Code §§ 5-7-102(12), -208, and -112.

NEBRASKA

I. FALSE POLITICAL SPEECH LAW

Nebraska does not appear to have a false political speech law.

II. DEFINITION OF EXPENDITURE/EXPRESS ADVOCACY

An expenditure is defined, in relevant part, as:

a payment, donation, loan, pledge, or promise of payment of money or anything of ascertainable monetary value for goods, materials, services, or facilities *in assistance of, or in opposition to, the nomination or election of a candidate or the qualification, passage, or defeat of a ballot question.*

Neb. Rev. Stat. § 49-1419(1) (emphasis added). *See also id.* § 49-1428 (defining “independent expenditure” by reference to an “expenditure”).

A communication is not an “expenditure” “if the communication does not *support or oppose* a ballot issue or candidate by name or clear inference.” 4 Neb. Admin. Code § 10.002.06B.

(IFS is also aware that the Nebraska Accountability and Disclosure Commission (“NADC”) has interpreted the definition of an “expenditure” broadly. *See* Neb. Accountability and Disclosure Comm’n Op. No. 152. Although the NADC purported to be applying the *MCFL* standard, the agency’s treatment of express advocacy arguably was broader than the *MCFL* standard. *See id.* On the other hand, IFS is also aware that, in practice, the NADC does not appear to be pursuing enforcement against issue ads that discuss candidates. *See, e.g.,* Robynn Tysver, Anti-Suttle ads brought to you by . . . who knows?, OMAHA WORLD HERALD, Apr. 23, 2013, A1.)

III. ELECTIONEERING COMMUNICATIONS

(a) Regulation of ECs. Nebraska does not regulate “electioneering communications” as such but does require disclaimers on communications that refer to candidates and ballot questions. *See* Neb. Rev. Stat. § 49-1474.01.

(b) What Content Triggers Regulation as an Electioneering Communication. The disclaimer requirement applies to certain communications “relating to a candidate or ballot question.” *Id.* § 49-1474.01(1).

(c) Types of Media Covered. The disclaimer requirement applies to any “billboard, placard, poster, pamphlet, or other printed matter,” as well as radio and television advertisements. *Id.*

(d) Reporting Threshold. There is no reporting requirement, but there also is no monetary threshold for the disclaimer requirement. *See id.*

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(e) **Time Windows.** There are no time windows for when the disclaimer requirement applies. *See id.*

(f) **Jurisdictional Limitation.** There is no jurisdictional limitation on the applicability of the disclaimer requirement. *See id.*

(g) **Donor Disclosure.** The disclaimer requirement does not involve donor disclosure. *See id.*

(h) **501(c)(3) Exemption.** There is no specific exemption to the disclaimer requirement for 501(c)(3) sponsors of communications. *See id.* and 4 Neb. Admin. Code Ch.8 (disclaimer exemptions).

(i) **Media Exemption.** There is no specific exemption to the disclaimer requirement for the media. *See id.*

(j) **Other Exemptions.** The following materials are exempt from the disclaimer requirement:

windshield stickers, yard signs, bumper stickers, campaign buttons, balloons, Christmas cards, address books, ashtrays, badges & badgeholders, cigarette lighters, clothespins, T-shirts, coasters, combs, cups, earrings, emeryboards, envelopes, erasers, flyswatters, frisbees, glasses, golf balls, golf tees, hats, horns, icescrapers, keyrings, knives, letter openers, magnifying glasses, matchbooks, mini-pocket calculators, nailclippers, nailfiles, napkins, noisemakers, paper & plastic cups, paper & plastic plates, paperweights, pencils, pendants, pennants, pens, pinwheels, plastic table wear, pocket protectors, potholders, ribbons, rulers, shoehorns, staple removers, sunglasses, sunvisors, swizzle sticks, tickets to fundraisers, whistles, billboards, electronic signs, palm or business cards, magnetic stickers, bookmarkers.

Neb. Rev. Stat. § 49-1474.01(2) and 4 Neb. R. & Regs. § 8-(2).

IV. **DONOR DISCLOSURE FOR INDEPENDENT EXPENDITURES MADE BY ENTITIES THAT ARE NOT PACS**

(a) **Donor Disclosure.** Donor disclosure is not required for sponsors of IEs if they are “organized under the laws of the State of Nebraska or doing business in the state.” Neb. Rev. Stat. § 49-1469(2).

(*See also* NADC Form B-7, at <http://www.nadc.nebraska.gov/docs/B-7.doc>.)

However, donor disclosure is required for sponsors of IEs totaling \$10,000 or more during the calendar year that do not meet the above requirements. *Id.* §§ 49-1479.02 and -1433.01.

It is unclear whether disclosure is limited only to donors of contributions earmarked for IEs. Arguably, the only donors required to be disclosed are those who made “contributions”

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to the entity “for the purpose of influencing the nomination or election of a candidate, or for the qualification, passage, or defeat of a ballot question” in Nebraska. *See* Neb. Rev. Stat. §§ 49-1479.02, -1433.01, and -1415(1) (defining “contribution”).

(The NADC does not appear to have issued any guidance clarifying this point. *See also* NADC Form B-9, at <http://www.nadc.nebraska.gov/docs/B-9.doc>.)

(b) Threshold for Donor Disclosure. For out-of-state sponsors of IEs not doing business in Nebraska, each person who made a “contribution” of more than \$250 in the calendar year to the sponsoring entity must be disclosed. *Id.* §§ 49-1479.02(2) and -1433.01.

As noted above, it is not entirely clear whether this disclosure only applies to contributions earmarked for Nebraska IEs or political activity in the state.

There also does not appear to be any allowance under which donors may avoid disclosure if they prohibit their donations from being used to fund IEs, or whereby disclosure may be limited to donors to a segregated account that is used to fund IEs.

V. DISCLAIMER REQUIREMENTS FOR INDEPENDENT EXPENDITURES AND ELECTIONEERING COMMUNICATIONS

(a) Form of Disclaimer. The Nebraska statute only specifies content that must be included in required disclaimers and does not specify whether such disclaimers must be written or spoken (as/where applicable). *See id.* § 49-1474.01

(b) Content of Disclaimer. For any “billboard, placard, poster, pamphlet, or other printed matter relating to a candidate or ballot question,” the disclaimer must identify the sponsor’s name and street address. *Id.*

For any radio or TV ad “relating to a candidate or ballot question,” the disclaimer must identify the sponsor’s name. *Id.*

For any “expenditure” subject to the reporting requirements discussed above that are made by robocall, the sponsor’s name must be stated “immediately preceding the message.” *Id.* § 49-1474.02(1).

For any “expenditure” subject to the reporting requirements discussed above that are made by live calls, the sponsor’s name must be stated “immediately upon the request of the recipient of the message.” *Id.* § 49-1474.02(2).

For any “expenditure” subject to the reporting requirements discussed above that are made by “any electronic means, including the Internet or email,” the disclaimer must identify the sponsor’s name. *Id.* § 49-1474.02(3).

(c) Types of Media Covered. The following media are specifically covered by the disclaimer requirements:

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- Any billboard, placard, poster, pamphlet, or other printed matter relating to a candidate or ballot question;
- Radio and TV ads;
- Robocalls and live calls;
- “Any electronic means,” including the Internet and email.

Id. §§ 49-1474.01 and -1474.02.

(d) Exceptions. The following are exempt from the disclaimer requirements:

windshield stickers, yard signs, bumper stickers, campaign buttons, balloons, Christmas cards, address books, ashtrays, badges & badgeholders, cigarette lighters, clothespins, T-shirts, coasters, combs, cups, earrings, emeryboards, envelopes, erasers, flyswatters, frisbees, glasses, golf balls, golf tees, hats, horns, icescrapers, keyrings, knives, letter openers, magnifying glasses, matchbooks, mini-pocket calculators, nailclippers, nailfiles, napkins, noisemakers, paper & plastic cups, paper & plastic plates, paperweights, pencils, pendants, pennants, pens, pinwheels, plastic table wear, pocket protectors, potholders, ribbons, rulers, shoehorns, staple removers, sunglasses, sunvisors, swizzle sticks, tickets to fundraisers, whistles, billboards, electronic signs, palm or business cards, magnetic stickers, bookmarkers.

Neb. Rev. Stat. § 49-1474.01(2) and 4 Neb. R. & Regs. § 8-(2).

VI. STATUTORY OR REGULATORY AUTHORITY FOR SUPER PACS

Although Nebraska law does not specifically address super PACs, Nebraska does not impose any limits or source prohibitions on political contributions.

All political committees, other than a candidate, ballot question, or political party committee, are known as “independent committees.” *See* Neb. Rev. Stat. § 49-1427; *see also* 2013 LB 79 § 41 (abolishing contribution limits).

VII. MAJOR/PRIMARY PURPOSE FOR PAC STATUS

Nebraska may or may not have a “primary purpose” standard, but the statute is so unclear that it might as well not have one. A “committee” is defined as:

(a) *any combination of two or more individuals* which receives contributions or makes expenditures of five thousand dollars or more in a calendar year for the purpose of influencing or attempting to influence the action of the voters for or against the nomination or election of one or more candidates or the qualification, passage, or defeat of one or more ballot questions *or*

(b) *a person whose primary purpose* is to receive contributions or make expenditures and who receives or makes contributions or expenditures of five thousand dollars or more in a calendar year for the purpose of influencing or attempting to influence the action of the voters for or against the nomination or election of one or more candidates or the qualification, passage, or defeat of

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one or more ballot questions, except that an individual, other than a candidate, shall not constitute a committee.

Neb. Rev. Stat. § 49-1413(1) (emphasis added); *see also id.* § 49-1438 (defining “person”).

(It is unclear what the difference is between subparagraphs (a) and (b) and when a “primary purpose” standard applies and when it does not. IFS has interpreted subparagraph (a) to address the status of informal groups consisting of individuals, and subparagraph (b) to address the status of entities with a more formal structure that are enumerated in the statute’s definition of “person,” as well as individual persons. However, this is not based on any external legal authorities or guidance.)

VIII. PAC STATUS DETERMINATION AND THRESHOLDS

(a) PAC Definition. A “committee” is defined as:

(a) any combination of two or more individuals which receives contributions or *makes expenditures* of five thousand dollars or more in a calendar year for the purpose of influencing or attempting to influence the action of the voters for or against the nomination or election of one or more candidates or the qualification, passage, or defeat of one or more ballot questions or

(b) a person whose primary purpose is to receive contributions or *make expenditures* and who receives or makes contributions or expenditures of five thousand dollars or more in a calendar year for the purpose of influencing or attempting to influence the action of the voters for or against the nomination or election of one or more candidates or the qualification, passage, or defeat of one or more ballot questions, except that an individual, other than a candidate, shall not constitute a committee.

Id. § 49-1413(1) (emphasis added).

(As discussed above in Section II, however, the definition of “expenditure” is very open-ended and vague.)

(b) Threshold for PAC Registration/Reporting. The threshold for political committee regulation is receiving contributions or making expenditures totaling \$5,000 or more per calendar year. *Id.*

This threshold does not appear to be adjusted for inflation. *See id.*

(c) Threshold for Disclosure of PAC Donors. Contributors are required to be disclosed if they make contributions totaling more than \$250 during the reporting period. *Id.* § 49-1455(d) and (e).

(d) Disclosure of Donors’ Employer Information on PAC Reports. Donors’ employer information is not required. *Id.*

NEBRASKA

IX. REGULATION OF “INCIDENTAL COMMITTEES”

Nebraska does not appear to regulate “incidental committees.”

X. PRIVATE ENFORCEMENT ACTIONS

The NADC has primary authority for investigating complaints received from the general public. *Id.* § 49-14,124. However, complainants also may bring a civil suit in court to compel the NADC to act or to compel compliance after exhausting administrative remedies. *Id.* § 49-14,127.

XI. COORDINATION

(a) **“Content Prong.”** An independent expenditure is defined in reference to an “expenditure.” *Id.* § 49-1428.

(As discussed above in Section II, the definition of “expenditure” is very open-ended and vague.)

(b) **Former Employee/Vendor “Conduct Prong.”** The coordination concept does not appear to specifically address former employees/common vendors. *See id.*

(In practice, IFS is aware of candidates and independent groups using common vendors in Nebraska.)

(c) **Public Information Exemption.** The coordination concept does not appear to explicitly recognize a publicly available information exemption.

XII. LOBBYING

(a) **General Lobbyist/Lobbyist Principal Donor Disclosure.** A lobbyist principal is required to report “the name and address of every person from whom it has received more than one hundred dollars in any one month for lobbying purposes.” *Id.* § 49-1483(7).

(b) **Grassroots Lobbying.** It is unclear from the statutory definition of lobbying whether grassroots lobbying is covered in Nebraska. Based on informal guidance from NADC Executive Director Frank Daley, IFS is aware that some forms of what are commonly considered to be grassroots lobbying are regulated as lobbying, while other forms of grassroots lobbying are not regulated.

“Lobbying” is defined as:

the practice of promoting or opposing for another person, as defined in section 49-1438, the introduction or enactment of legislation or resolutions before the Legislature or the committees or the members thereof, and shall also include the practice of promoting or opposing executive approval of legislation or resolutions.

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Id. § 49-1433.

Lobbying includes:

- A “communication in person or by telephone with an official in the legislative or executive branches of state government . . . to influence legislative action”;
- A “communication with officials of the executive branch of state government . . . to take or refrain from taking any action or position in support of or in opposition to proposed legislation or resolutions,” such as “influenc[ing] an executive branch official to make or refrain, or cause others to make or refrain, from making appearances before legislative committees or contacting members of the Legislature”; and
- The “solicitation of receipts or the making of expenditures, to influence legislative action.”

4 Neb. R. & Regs. §§ 6.002.03A, .002.03A1, and .002.04.

(c) Forms of Grassroots Lobbying Communications Regulated. If grassroots lobbying is covered, the statute and regulations do not specify any particular forms of grassroots lobbying communications that are regulated. *See* Neb. Rev. Stat. § 49-1433 and 4 Neb. Admin. R. & Regs. §§ 6.002.03A, .002.03A1, and .002.04.

(d) Grassroots Lobbying Reference to Specific Legislation. If grassroots lobbying is covered, the definition of “lobbying” is quite broad and does not appear to require reference to specific legislation in order for a communication to be regulated as lobbying. *See* Neb. Rev. Stat. § 49-1433.

On the other hand, the term “legislative action” appears to require a reference to specific legislation, and is defined as the “introduction, sponsorship, support, opposition, consideration, debate, voting, passage, defeat, approval, veto, delay, or an official action by an official in the executive branch or an official in the legislative branch on a bill, resolution, amendment, nomination, appointment, report, or any matter pending or proposed in a committee or the Legislature.” Neb. Rev. Stat. § 49-1431; *see also* 4 Neb. Admin. R. & Regs. § 6.002.03A (defining “lobbying” to “include[] *but is not limited to*” communications about “legislative action”) (emphasis added).

(e) Grassroots Lobbying Registration and Reporting Thresholds. If grassroots lobbying is covered, there are no monetary thresholds for lobbying registration and reporting. *See* Neb. Rev. Stat. §§ 49-1434(2) (defining “lobbyist”), -1434(1) (defining lobbyist “principal”), -1480 (registration), and -1483 (reporting); *see also* 4 Neb. Admin. R. & Regs. §§ 6.003.04, .003.04B, .008.02A1 (lobbyist registration exemptions).

(f) Donor Disclosure for Grassroots Lobbying. If grassroots lobbying is covered, donor disclosure is required on lobbying reports. *See* Section XII(a), *supra*.

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(g) Earmarked Donor Disclosure for Grassroots Lobbying. If grassroots lobbying is covered, donor disclosure is limited to donors of earmarked donations. *See* Section XII(a), *supra*.

(h) Donor Disclosure Threshold for Grassroots Lobbying (If Not Limited to Earmarked Donors). N/A

(i) Threshold Indexing (If Grassroots Lobbying Is Regulated). There are no monetary thresholds for lobbying registration and reporting. *See* Neb. Rev. Stat. §§ 49-1434(2) (defining “lobbyist”), -1434(1) (defining lobbyist “principal”), -1480 (registration), and -1483 (reporting); *see also* 4 Neb. Admin. R. & Regs. §§ 6.003.04, .003.04B, .008.02A1 (lobbyist registration exemptions).

The \$100 threshold for donor disclosure on lobbyist principal reports also is not indexed for inflation. *See* Neb. Rev. Stat. § 49-1483(7).

NEVADA

I. FALSE POLITICAL SPEECH LAW

Nevada does not appear to have a false political speech law. *See* Nev. 2005 Laws Ch. 469 § 21 (repealing former false political speech law).

II. DEFINITION OF EXPENDITURE/EXPRESS ADVOCACY

Nevada's statute appears to articulate a *WRTL* express advocacy standard.

An "expenditure" is defined, in relevant part, as "all . . . money paid, to advocate expressly the election or defeat of a clearly identified candidate or group of candidates or the passage or defeat of a clearly identified question or group of questions on the ballot" Nev. Rev. Stat. § 294A.0075.

"Advocates expressly" or "expressly advocates" means:

that a communication, taken as a whole, is susceptible to no other reasonable interpretation other than as an appeal to vote for or against a clearly identified candidate or group of candidates or a question or group of questions on the ballot at a primary election, general election or special election. A communication does not have to include the words 'vote for,' 'vote against,' 'elect,' 'support' or other similar language to be considered a communication that expressly advocates the passage or defeat of a candidate or a question.

Id. § 294A.0025.

(However, in a federal Ninth Circuit case, the state cited *Furgatch* in discussing its express advocacy standard. *See ACLU v. Heller*, 378 F.3d 979, 985 (9th Cir. 2002).)

III. ELECTIONEERING COMMUNICATIONS

Nevada does not regulate "electioneering communications."

IV. DONOR DISCLOSURE FOR INDEPENDENT EXPENDITURES MADE BY ENTITIES THAT ARE NOT PACS

(a) **Donor Disclosure.** The statute purports to require broad disclosure of sources of each "contribution" on independent expenditure reports, and the definition of "contribution" is not limited to funds earmarked for IEs or political purposes. *See id.* §§ 294A.140 (independent expenditure reporting requirement) and .007 (defining "contribution").

(IFS is aware that the Secretary of State's office has previously provided informal guidance indicating that, for entities that otherwise do not meet the definition of a PAC, itemization of contributor information is not required so long as the entity does not receive contributions earmarked for the purpose of sponsoring independent expenditures.)

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(b) Threshold for Donor Disclosure. Each “contribution” or “contributions” totaling more than \$1,000 received from the same source by the sponsor of the IE during the reporting period is required to be disclosed. *Id.* § 294A.140.

There also does not appear to be any allowance under which donors may avoid disclosure if they prohibit their donations from being used to fund IEs, or whereby disclosure may be limited to donors to a segregated account that is used to fund IEs.

V. DISCLAIMER REQUIREMENTS FOR INDEPENDENT EXPENDITURES AND ELECTIONEERING COMMUNICATIONS

(a) Form of Disclaimer. The Nevada statute only specifies content that must be included in required disclaimers and does not specify whether such disclaimers must be written or spoken (as/where applicable). *See id.* § 294A.348.

(b) Content of Disclaimer. The disclaimer must indicate the entity that paid for the communication. If the communication is approved by a candidate, the disclaimer must state that the candidate approved the communication and disclose the street address, telephone number, and Internet address, if any, of the entity that paid for the communication. *Id.*

(c) Types of Media Covered. The following media are specifically covered by the disclaimer requirements:

- Television or radio broadcast, newspaper, magazine, outdoor advertising facility, mailing or any other type of general public political advertising;
- Internet website; and
- An electronic mailing to more than 500 people.

Id.

(d) Exceptions. The following are exempt from the disclaimer requirements:

1. Any cap, hat, shirt or other article of clothing, regardless of its cost; or
2. . . . any item having a retail cost per item of less than \$5, including, without limitation, any button, pen, pencil, ruler, magnet, key tag, emery board, comb, letter opener, can holder, bottle opener, jar opener, balloon or piece of candy. The exclusion otherwise provided by this subsection does not apply to any door hanger, bumper sticker, yard sign or advertising through a television or radio broadcast, newspaper, magazine, outdoor advertising facility or mailing.

Id. § 294A.349.

VI. STATUTORY OR REGULATORY AUTHORITY FOR SUPER PACS

Although Nevada law does not specifically address super PACs, Nevada does not impose any limits or source prohibitions on contributions to PACs. *See Nev. Sec’y of State, 2016 Campaign Guide at 9, available at <http://nvsos.gov/sos/home/showdocument?id=4084>.*

NEVADA

VII. MAJOR/PRIMARY PURPOSE FOR PAC STATUS

Nevada has a “primary purpose” standard, but the statute is so unclear as to which groups this standard applies to that it might as well not have one. In addition, Nevada also regulates non-primary purpose entities. A “committee for political action” is defined as:

(a) *Any group of natural persons or entities* that solicits or receives contributions from any other person, group or entity and:

(1) Makes or intends to make contributions to candidates or other persons; or

(2) Makes or intends to make expenditures, designed to affect the outcome of any primary election, general election, special election or question on the ballot.

(b) *Any business or social organization, corporation, partnership, association, trust, unincorporated organization or labor union:*

(1) Which has as its *primary purpose* affecting the outcome of any primary election, general election, special election or any question on the ballot and for that purpose receives contributions in excess of \$1,500 in a calendar year or makes expenditures in excess of \$1,500 in a calendar year; or

(2) Which *does not have as its primary purpose* affecting the outcome of any primary election, general election, special election or any question on the ballot, but for the purpose of affecting the outcome of any election or question on the ballot receives contributions in excess of \$5,000 in a calendar year or makes expenditures in excess of \$5,000 in a calendar year.

Nev. Rev. Stat. § 294A.0055.1 (emphasis added).

(For many types of organizations, it is unclear whether subparagraph (a) or (b) will apply to them.)

VIII. PAC STATUS DETERMINATION AND THRESHOLDS

(a) PAC Definition. A “committee” is defined in terms of soliciting and receiving “contributions” and making “expenditures.” *Id.*

(b) Threshold for PAC Registration/Reporting. Based on the PAC definition provided in Section VII above, it is not entirely clear when the monetary thresholds apply. To the extent the thresholds do apply, the threshold for PAC registration/reporting is receiving contributions or making expenditures totaling more than \$1,500 in a calendar year for “primary purpose” PACs and receiving contributions or making expenditures totaling more than \$5,000 in a calendar year for non-primary purpose PACs. *Id.*

These thresholds do not appear to be adjusted for inflation. *See id.*

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(c) **Threshold for Disclosure of PAC Donors.** Contributors are required to be disclosed if they make contributions totaling more than \$1,000 during the reporting period. *Id.* §§ 294A.140, .150, .210, .220, and .270.

(d) **Disclosure of Donors' Employer Information on PAC Reports.** Donors' employer information is not required. *Id.* §§ 294A.140(10) and .270(7).

IX. REGULATION OF "INCIDENTAL COMMITTEES"

Nevada regulates non-primary purpose committees.

Specifically, a PAC includes "Any business or social organization, corporation, partnership, association, trust, unincorporated organization or labor union . . . [w]hich *does not have as its primary purpose* affecting the outcome of any primary election, general election, special election or any question on the ballot, but for the purpose of affecting the outcome of any election or question on the ballot receives contributions in excess of \$5,000 in a calendar year or makes expenditures in excess of \$5,000 in a calendar year." *Id.* § 294A.0055.1 (emphasis added).

For these non-primary purpose PACs, the itemization requirement for contributors applies to "only those contributions received for the purpose of affecting the outcome of any primary election, general election, special election, or any question on the ballot." *Id.* § 294A.230.2(b).

X. PRIVATE ENFORCEMENT ACTIONS

Nevada does not appear to provide for private enforcement actions. *See id.* §§ 294A.410 and .420 (providing for enforcement by the Secretary of State and Attorney General).

XI. COORDINATION

(a) **"Content Prong."** An independent expenditure is defined in reference to an "expenditure." *Id.* § 294A.0077. As discussed above in Section II, Nevada's statute appears to define "expenditures" according to a *WRTL* express advocacy standard (although courts have construed it according to a *Furgatch* standard).

(b) **Former Employee/Vendor "Conduct Prong."** The coordination concept does not appear to specifically address former employees/common vendors. *See id.*

(c) **Public Information Exemption.** The coordination concept does not appear to explicitly recognize a publicly available information exemption.

XII. LOBBYING

(a) **General Lobbyist/Lobbyist Principal Donor Disclosure.** Donor disclosure does not appear to be required on lobbying registrations or reports. *See id.* § 218H.210 and .400.

NEVADA

(b) Grassroots Lobbying. Grassroots lobbying is not regulated in Nevada.

“Lobbying” is not separately defined, but a “lobbyist” is defined as a person who:

- Appears in person in the Legislative Building or any other building in which the Legislature or any of its standing committees hold meetings; and
- Communicates directly with a member of the Legislative Branch on behalf of someone other than himself or herself to influence legislative action whether or not any compensation is received for the communication.

Id. § 218H.080(1).

(IFS has informally confirmed with the Nevada Legislative Counsel Bureau that grassroots lobbying is not regulated by the state.)

(c) Forms of Grassroots Lobbying Communications Regulated. N/A

(d) Grassroots Lobbying Reference to Specific Legislation. N/A

(e) Grassroots Lobbying Registration and Reporting Thresholds. N/A

(f) Donor Disclosure for Grassroots Lobbying. N/A

(g) Earmarked Donor Disclosure for Grassroots Lobbying. N/A

(h) Donor Disclosure Threshold for Grassroots Lobbying (If Not Limited to Earmarked Donors). N/A

(i) Threshold Indexing (If Grassroots Lobbying Is Regulated). N/A

NEW HAMPSHIRE

I. FALSE POLITICAL SPEECH LAW

New Hampshire does not appear to have a false political speech law.

II. DEFINITION OF EXPENDITURE/EXPRESS ADVOCACY

An “expenditure” is defined as a payment “for the purpose of promoting the success or defeat of a candidate or candidates or measure or measures,” and also includes an “independent expenditure.” N.H. Rev. Stat. § 664:2(IX).

An “independent expenditure” is defined, in relevant part, as “expenditures that pay for the development and distribution of a communication that *expressly advocates* the election or defeat of a clearly identified candidate or candidates or the success or defeat of a measure or measures.” *Id.* § 664:2(VI).

“Expressly advocates,” including any of its grammatical variants, is not further defined.

III. ELECTIONEERING COMMUNICATIONS

New Hampshire does not appear to regulate electioneering communications.

IV. DONOR DISCLOSURE FOR INDEPENDENT EXPENDITURES MADE BY ENTITIES THAT ARE NOT PACS

(a) Donor Disclosure. Donor disclosure does not appear to be limited to earmarked donations.

“Political advocacy organizations” are required to report “any funds received or expenses incurred in connection with communications . . . under the same deadlines and in the same general form required of political committees.” *Id.* § 664:6-a.

A “political advocacy organization” is defined as:

any entity that spends \$5,000 or more in a calendar year to pay for a communication that is functionally equivalent to express advocacy because, when taken as a whole, such communication is likely to be interpreted by a reasonable person only as advocating the election or defeat of a clearly identified candidate or candidates or the success or defeat of a measure or measures, taking into account whether the communication involved mentions a candidacy or a political party, or takes a position on a candidate's character, qualifications, or fitness for office.

Id. § 664:2(XXII).

Assuming the same PAC donor disclosure requirements apply, a “political advocacy organization” is required to disclose “each of its receipts exceeding \$25 with the full name and postal address of the contributor in alphabetical order and the amount of the

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contribution.” *Id.* § 664:6(I). Arguably, only those donors who give “for the purpose of influencing the nomination or election of any candidate” are required to be disclosed, *see id.* § 664:2(VIII) (defining “contribution”), but this point is unclear.

There does not appear to be any allowance under which donors may avoid disclosure if they prohibit their donations from being used to fund IEs, or whereby disclosure may be limited to donors to a segregated account that is used to fund IEs.

(b) Threshold for Donor Disclosure. Disclosure is required for donors who give more than \$25 (it is not clear what period of time is covered by this threshold). *Id.* §§ 664:6-a, 664:2(XXII), and 664:6(I).

V. DISCLAIMER REQUIREMENTS FOR INDEPENDENT EXPENDITURES AND ELECTIONEERING COMMUNICATIONS

(a) Form of Disclaimer. New Hampshire generally does not have any special form requirements for disclaimers, *see id.* §§ 664:14, 664:14-a, 664:16, 664:16-a, but disclaimers for TV “political advertising” must be made “both aurally and visually” *id.* § 664:14(VI).

(b) Content of Disclaimer.

1. General “political advertising”²³ – for a political committee, the name and address of the chairman or treasurer must be provided. *Id.* § 664:14(I). For a natural person, the person’s name and address must be provided. *Id.* For any other type of organization, the name of the organization, as well as the name and address of the chairman or treasurer must be provided. *Id.* § 664:14(II).

Specifically, the disclaimer also must state: “This advertisement has been paid for by (name of sponsor) and has not been authorized by any candidate.” *Id.* § 664:14(VI).

2. Advertising that “mentions or depicts a candidate” but “does not advocate the success or defeat” of any candidate or measure – the disclaimer must state, “This advertisement has been paid for by (name of sponsor) and has not been authorized by any candidate.” *Id.* § 664:14(VII).

3. Newspapers, periodicals, and billboards – (presumably in addition to any of the requirements above), “political advertising” that is printed in or on any of these media must also be marked “Political Advertising.” *Id.* § 664:16.

4. Robocalls – a robocall that “expressly or implicitly advocates the success or defeat of any party, measure, or person at any election, or contains information about any candidate or party” must be preceded by a live operator, who must provide:

²³ “Political advertising” is defined as “any communication, including buttons or printed material attached to motor vehicles, which expressly or implicitly advocates the success or defeat of any party, measure or person at any election.” *Id.* § 664:2(VI).

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(a) The name of the candidate or of any organization or organizations the person is calling on behalf of.

(b) The name of the person or organization paying for the delivery of the message and the name of the fiscal agent, if applicable.

Id. § 664:14-a(I) and (II).

5. “Push-Polls”²⁴ – “prior to asking any person contacted a question relating to a candidate,” a caller must:

(a) Inform the person that the telephone call is a “paid political advertisement;” and

(b) Identify the organization making the call and the organization paying for the call; and

(c) Provide a valid, current, publicly-listed telephone number for the organization making the call; and

(d) Identify that the telephone call is being made on behalf of, in support of, or in opposition to a particular candidate or candidates for public office and identify that candidate or candidates by name.

Id. § 664:16-a(I).

(c) Types of Media Covered. The various disclaimer requirements generally apply to any type of communication, and also specifically to TV ads, newspapers, periodicals, billboards, and telephone calls. *See id.* §§ 664:14, 664:14-a, 664:16, and 664:16-a.

(d) Exceptions. “[B]uttons or any printed or written political advertising which is attached to or displayed on any motor vehicle” are exempt from the disclaimer requirements. *Id.* § 664:14(VI).

“Signs or placards” may provide an Internet website address in lieu of the disclaimer if the website “immediately and prominently displays all of the information required” by the disclaimer requirements through election day. *Id.* § 664:14(VIII).

²⁴ “Push-polling” is defined as: (a) Calling voters on behalf of, in support of, or in opposition to, any candidate for public office by telephone; and (b) Asking questions related to opposing candidates for public office which state, imply, or convey information about the candidates character, status, or political stance or record; and (c) Conducting such calling in a manner which is likely to be construed by the voter to be a survey or poll to gather statistical data for entities or organizations which are acting independent of any particular political party, candidate, or interest group as part of a series of like telephone calls that consist of more than 2,000 connected calls that last less than 2 minutes in presidential, gubernatorial, United States senatorial, or United States congressional elections; or conducting such calling as part of a series of like telephone calls that consist of more than 500 connected calls that last less than 2 minutes in executive council, state senate, city, town, school district, or village district elections; or conducting such calling as part of a series of like telephone calls that consist of more than 200 connected calls that last less than 2 minutes in state representative elections; and (d) Conducting such calling for purposes other than bona fide survey and opinion research. *Id.* § 664:2(XVII).

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VI. STATUTORY OR REGULATORY AUTHORITY FOR SUPER PACS

The New Hampshire statute does not appear to formally provide for super PACs.

VII. MAJOR/PRIMARY PURPOSE FOR PAC STATUS

New Hampshire's PAC definition takes varied approaches to the major/primary purpose issue by remaining silent on the issue, explicitly covering entities that have a "major purpose" of political activity, as well as certain entities that do not have such a "major purpose."

Specifically, a "political committee" is defined to include, in relevant part:

(a) Any organization of 2 or more persons that promotes the success or defeat of a candidate or candidates or measure or measures, including the political committee of a political party . . .

(c) Any organization that has as *its major purpose* to promote the success or defeat of a candidate or candidates or measure or measures and whose receipts or expenditures total \$2,500 or more in a calendar year for that purpose;

(d) Any organization that *does not have as its major purpose* to promote the success or defeat of a candidate or candidates or measure or measures *but that makes expenditures that total \$5,000 or more in a calendar year.*

Id. § 664:2(II) (emphasis added).

VIII. PAC STATUS DETERMINATION AND THRESHOLDS

(a) PAC Definition. A "political committee" is defined to include, in relevant part:

(a) Any organization of 2 or more persons that *promotes the success or defeat of a candidate or candidates or measure or measures*, including the political committee of a political party . . .

(c) Any organization that has as its major purpose *to promote the success or defeat of a candidate or candidates or measure or measures* and whose *receipts or expenditures* total \$2,500 or more in a calendar year for that purpose;

(d) Any organization that does not have as its major purpose to promote the success or defeat of a candidate or candidates or measure or measures *but that makes expenditures that total \$5,000 or more in a calendar year.*

Id. § 664:2(II) (emphasis added).

(b) Threshold for PAC Registration/Reporting. Under part (a) of the PAC definition, there is no apparent threshold for registration. *See id.* §§ 664:2(III)(a) (definition) and 664:3 (registration). However, the threshold for reporting is having receipts or expenditures

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of more than \$500 during a reporting period. *See id.* § 664:4(I) (reporting); *see also id.* § 664:4(IV) (“Any political committee whose receipts or expenditures do not exceed \$500 for a reporting period need not file.”).

Under part (c) of the PAC definition, the threshold for registration and reporting is having receipts or expenditures totaling \$2,500 or more in a calendar year. *Id.* § 664:2(III)(c).

Under part (d) of the PAC definition, the threshold for registration and reporting is making expenditures that total \$5,000 or more in a calendar year. *Id.* § 664:2(III)(d).

These thresholds are not adjusted for inflation. *See id.* § 664:2(II)(b) and (d).

(c) Threshold for Disclosure of PAC Donors. Contributors are required to be disclosed if they make contributions totaling more than \$25. *Id.* § 664:6(I). It is unclear over what period of time this threshold applies, but it appears to be based on the reporting period. *See id.*

(d) Disclosure of Donors’ Employer Information on PAC Reports. Donors’ employer information is required for donors who give more than a total of \$100 “for each election.”²⁵ *Id.*

IX. REGULATION OF “INCIDENTAL COMMITTEES”

New Hampshire does not regulate “incidental committees” as such. However, as discussed above in Section VII, the lack of any major or primary purpose limitation in two of its PAC definitions arguably functions as a regulation of incidental committees.

X. PRIVATE ENFORCEMENT ACTIONS

Complaints alleging violations of the state’s campaign finance laws must be filed with the state Attorney General. *See id.* § 664:18.

XI. COORDINATION

(a) “Content Prong.” As discussed above in Section II, New Hampshire’s coordination law applies to “a communication that *expressly advocates* the election or defeat of a clearly identified candidate or candidates or the success or defeat of a measure or measures,” *id.* § 664:2(VI), and “expressly advocates,” including any of its grammatical variants, is not further defined.

(b) Former Employee/Vendor “Conduct Prong.” The coordination law does not specifically address former employees/common vendors. *See id.*

²⁵ An “election” is defined as “any general biennial or special election, political party primary, or presidential preference primary.” *Id.* § 664:2(I).

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(c) **Public Information Exemption.** The coordination law does not explicitly provide for a publicly available information exemption. *Id.*

XII. LOBBYING

(a) **General Lobbyist/Lobbyist Principal Donor Disclosure.** Donor disclosure is not required on lobbyist registrations and reports. *See id.* §§ 15:3(I) and 15:6.

(b) **Grassroots Lobbying.** New Hampshire's lobbying law appears to explicitly exempt grassroots lobbying by exempting from regulation any "[c]ommunication made in a speech, article, publication, or other material that is distributed and made available to the public, or through radio, television, cable television, the Internet, or other medium of mass communication." *Id.* § 15:1(V)(f).

(c) **Forms of Grassroots Lobbying Communications Regulated.** N/A

(d) **Grassroots Lobbying Reference to Specific Legislation.** N/A

(e) **Grassroots Lobbying Registration and Reporting Thresholds.** N/A

(f) **Donor Disclosure for Grassroots Lobbying.** N/A

(g) **Earmarked Donor Disclosure for Grassroots Lobbying.** N/A

(h) **Donor Disclosure Threshold for Grassroots Lobbying (If Not Limited to Earmarked Donors).** N/A

(i) **Threshold Indexing (If Grassroots Lobbying Is Regulated).** N/A

NEW JERSEY

I. FALSE POLITICAL SPEECH LAW

New Jersey does not appear to have a false political speech law.

II. DEFINITION OF EXPENDITURE/EXPRESS ADVOCACY

New Jersey's "expenditure" definition, which appears to be relevant primarily in the context of IEs, does not contain a content standard. In addition, "political communications" that are not coordinated with any candidate are defined according to a *Buckley* express advocacy standard.

An "expenditure" is defined as any "transfer of money or other thing of value . . . made by any . . . political committee [or] continuing political committee." N.J. Admin. Code § 19:25-1.7; *see also* N.J. Stat. § 19:44A-3(d).

New Jersey regulates "independent expenditures" using the term "expenditure." *See* N.J. Admin. Code § 19:25-12.7 (defining "independent expenditure") and -12.8 (general IE reporting requirement). New Jersey also requires "political communications" to be treated either as contributions or as IEs, depending on whether they are coordinated with candidates. *See id.* § 19:25-10.11.

A "political communication" is defined as:

(a) . . . any written or electronic statement, pamphlet, advertisement or other printed or broadcast matter or statement, communication, or advertisement delivered or accessed by electronic means, including, but not limited to, the Internet, *containing an explicit appeal for the election or defeat of a candidate* which is circulated or broadcast to an audience substantially comprised of persons eligible to vote for the candidate on whose behalf the appeal is directed. *Words such as "Vote for (name of candidate)," "Vote against (name of opposing candidate)," "Elect (name of candidate)," "Support name (name of candidate)," "Defeat (name of opposing candidate)," "Reject (name of opposing candidate)," and other similar explicit political directives constitute examples of appeals for the election or defeat of a candidate.*

(b) A written statement, pamphlet, advertisement, or other printed or broadcast matter or statement, communication, or advertisement delivered or accessed by electronic means, including, but not limited to, the Internet, *that does not contain an explicit appeal* pursuant to (a) above for the nomination for election or for the election or defeat of a candidate shall be deemed to be a political communication *if it meets the following conditions:*

1. The communication is circulated or broadcast within 90 days of the date of any election in which the candidate on whose behalf the communication is made is seeking nomination for election or elected office; except that in the case of a candidate for nomination for the office of Governor in a primary election, the period of time that a communication shall be deemed political shall be on or after January 1st in a year in which a primary election for Governor is being conducted, in the case of a candidate for election to the office of

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Governor in a general election, the period of time that a communication shall be deemed political shall begin on the day following the date of the gubernatorial primary election, and in the case of a candidate for election to the office of Lieutenant Governor in a general election, the period of time that a communication shall be deemed political shall begin on the day following certification pursuant to N.J.A.C. 19:25-15.4A;

2. The communication is circulated or broadcast to an audience substantially comprised of persons eligible to vote for the candidate on whose behalf the communication was made;

3. The communication contains a statement or reference concerning the governmental or political objectives or achievements of the candidate; *and*

4. The production, circulation or broadcast of the communication, or any cost associated with the production, circulation or broadcast of the communication, *has been made in whole or in part with the cooperation of, prior consent of, in consultation with, or at the request or suggestion of the candidate.*

N.J. Admin. Code § 19:25-10.10 (emphasis added).

III. ELECTIONEERING COMMUNICATIONS

New Jersey does not appear to regulate electioneering communications unless they are coordinated with a candidate. *See id.* § 19:25-10.10(b) and (b)(4).

IV. DONOR DISCLOSURE FOR INDEPENDENT EXPENDITURES MADE BY ENTITIES THAT ARE NOT PACS

Donor disclosure does not appear to be required on IE reports for sponsors that are not PACs. *See* N.J. Admin. Code § 19:25-12.8(b).

(*See also* N.J. Election Law Enforcement Comm’n (“ELEC”), Form IND, at <http://www.elec.state.nj.us/pdf/files/forms/compliance/indexpreport.pdf>.)

V. DISCLAIMER REQUIREMENTS FOR INDEPENDENT EXPENDITURES AND ELECTIONEERING COMMUNICATIONS

(a) **Form of Disclaimer.** The New Jersey regulations only specify content that must be included in required disclaimers, and do not specify whether such disclaimers must be written or spoken (as/where applicable). *See* N.J. Admin. Code §§ 19:25-13.1 to -13.5; *see also id.* § 19:25-15.28(a) (for independent expenditures regarding gubernatorial candidates in a general election).

(b) **Content of Disclaimer.** The disclaimer must “clearly state that the communication has been paid for by” the sponsor, as well as “the name and business or residence address of

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the sponsor.” *Id.* § 19:25-13.2; *see also id.* § 19:25-15.28(a)(2) (for independent expenditures regarding gubernatorial candidates in a general election). In addition, the disclaimer must state that “the expenditure was not made with the cooperation or prior consent of, or in consultation with or at the request or suggestion of, any candidate, or any person or committee acting on behalf of any candidate.” *Id.* § 19:25-13.3; *see also id.* § 19:25-15.28(a)(3) (for independent expenditures regarding gubernatorial candidates in a general election).

(*Nb.* The latter part of this disclaimer requirement does not make much sense with respect to IEs regarding ballot measures, but there does not appear to be an alternative disclaimer requirement for ballot measure IEs.)

(c) Types of Media Covered. The following media are specifically covered by the disclaimer requirements:

a press release, pamphlet, flyer, form letter, sign, billboard, or paid advertisement printed in any newspaper or other publication or broadcast on radio or television, or telephone call featuring a recorded message, or delivered or accessed by electronic means, including, but not limited to, the Internet or text messaging, or any other form of advertising directed to the electorate.

Id. § 19:25-13.1.

(d) Exceptions. The following are exempt from the disclaimer requirements:

1. A bona fide news item or editorial contained in any publication of bona fide general circulation;
2. Small, tangible items of de minimis value commonly used in election campaigns to convey a political message, including, but not limited to, buttons, combs, and nail files; and
3. Advertising space costing no more than \$50.00 and purchased by a candidate committee, joint candidates committee, political committee, continuing political committee, political party committee, legislative leadership committee or other person, in a political program book distributed at a fund-raising event, provided that the payment for the advertising space is subject to reporting under the Act.

Id. § 13:25-13.5.

VI. STATUTORY OR REGULATORY AUTHORITY FOR SUPER PACS

The New Jersey statute and regulations do not appear to formally provide for super PACs.

VII. MAJOR/PRIMARY PURPOSE FOR PAC STATUS

New Jersey’s PAC definitions do not have any “major” or “primary purpose” limitation. *See* N.J. Admin. Code § 19:25-1.7 and N.J. Stat. 19:44A-3(i) and (n).

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VIII. PAC STATUS DETERMINATION AND THRESHOLDS

(a) PAC Definition. A “political committee” is defined as:

any group of two or more persons acting jointly, or any corporation, partnership or any other incorporated or unincorporated association, which is organized to or does aid or promote the nomination, election or defeat of any candidate or candidates for public office, or which is organized to, or does aid or promote the passage or defeat of a public question in any election if the persons, corporation, partnership, or incorporated or unincorporated association *raises or expends \$2,400 or more to so aid or promote the nomination, election or defeat of a candidate or candidates or the passage or defeat of a public question.* A group or association organized to promote the candidacy of one or more candidates or aid or defeat the passage of a public question, without a term of existence substantially longer than the campaign, is a political committee.

Id. § 19:27-1.7 (emphasis added); *see also* N.J. Stat. § 19:44A-3(i) .

(It is unclear whether the verb “expends” here is intended to incorporate the “expenditures” concept. As discussed above in Section II, the definition of “expenditure” is itself very open-ended and vague. Regardless, the PAC definition also uses the verb “raises,” and ties that activity to money to “aid or promote the nomination, election or defeat of a candidate or candidates or the passage or defeat of a public question.” This could cover anything.)

(*Nb.* In addition, New Jersey regulates PACs as “continuing political committees” if they have made at least \$5,500 in *contributions* in connection with state elections, expect to make contributions during subsequent elections, and are certified as such by the ELEC. *See* N.J. Admin. Code § 19:27-1.7 and N.J. Stat. § 19:44A-3(n).)

(b) Threshold for PAC Registration/Reporting. The threshold for political committee regulation is “rais[ing] or expend[ing] \$2,400 or more to . . . aid or promote the nomination, election or defeat of a candidate or candidates or the passage or defeat of a public question.” N.J. Admin. Code § 19:27-1.7.

This threshold is adjusted for inflation. *See* N.J. Stat. § 19:44A-7.2(b)(1).

(c) Threshold for Disclosure of PAC Donors. Contributors are required to be disclosed if they make contributions totaling more than \$300 “during the period covered by the report.” *Id.* § 19:44A-8(d).

(ELEC appears to interpret the donor disclosure threshold as applying to all contributions given “during an election” instead during the reporting period per the statute. *See* ELEC, 2015 Compliance Manual for Political Committees at 16, *available at* http://www.elec.state.nj.us/pdf/files/forms/compliance/man_pc.pdf.)

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(d) Disclosure of Donors' Employer Information on PAC Reports. Donors' employer information is required. N.J. Stat. § 19:44A-8(a)(1) (for “political committees”) and (2) (for “continuing political committees”).

IX. REGULATION OF “INCIDENTAL COMMITTEES”

New Jersey does not regulate “incidental committees” as such but may be said to regulate incidental committees to the extent its PAC definition has no major or primary purpose limitation, as discussed above in Section VII.

(New Jersey's distinction between “political committees” and “continuing political committees,” as discussed in Section VIII(a) above, arguably does not mean that the former should necessarily be regarded, in effect, as “incidental committees.” “Political committees” appear to have quasi-ongoing and regularly scheduled reporting obligations and are subject to donor disclosure requirements. *See* ELEC, 2015 Compliance Manual for Political Committees at 7-8 and N.J. Stat. § 19:44A-8(a)(1).)

X. PRIVATE ENFORCEMENT ACTIONS

The ELEC appears to be solely responsible for investigating and penalizing campaign finance violations. N.J. Stat. § 19:44A-22(b).

XI. COORDINATION

(a) “Content Prong.” “Independent expenditures” are defined by reference to “expenditures.” *See* N.J. Admin. Code § 19:25-12.7. As discussed above in Section II, the definition of “expenditure” is very open-ended and vague.

In addition, New Jersey regulates “political communications” as IEs if they are not coordinated with any candidate. *See id.* §§ 19:25-10.11(c) and 19:25-12. As discussed above in Section II, “political communications” that are not coordinated are defined according to a *Buckley* express advocacy standard.

Lastly, New Jersey regulates “political communications” that are coordinated with candidates as contributions. *See id.* § 19:25-10.11(b). Regulated coordinated “political communications” are those that “contain[] a statement or reference concerning the governmental or political objectives or achievements of the candidate” and are disseminated within certain time periods (generally 90 days, but different time windows apply for candidates for Governor and Lieutenant Governor) to a relevant electorate. *See id.* § 19:25-10.10(b).

(b) Former Employee/Vendor “Conduct Prong.” The general coordination concept does not appear to specifically address former employees/common vendors. *See id.* §§ 19:25-10.10 and -12.3.

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However, for the specific purposes of independent expenditures concerning gubernatorial candidates in the general election, the use of common consultants and employees is a factor for determining the independence of the expenditure. *See id.* § 19:25-15.28C(c)(7). There is no particular timeframe within which the use of common consultants and employees is considered evidence of coordination.

(c) Public Information Exemption. The coordination concept does not appear to explicitly recognize a publicly available information exemption. *Id.*

XII. LOBBYING

(a) General Lobbyist/Lobbyist Principal Donor Disclosure. A lobbyist principal is required to disclose donors if the lobbyist principal’s “major purpose” is to engage in lobbying. 19:25-20.10(2).

Donor disclosure also is required for any lobbyist principal if funds were given to the lobbyist principal “with the specific intent” that the funds be used for lobbying. *Id.*

If donor disclosure is required, donors that have given a total of more than \$100 during the calendar year are required to be disclosed by name and address. *Id.*

(b) Grassroots Lobbying. For persons or entities that are not already registered lobbyists or lobbyist principals, grassroots lobbying may trigger the requirement to report as a lobbyist. N.J. Stat. § 52:13C-22.1.

Specifically, the reporting requirement applies to sponsoring “communication[s] with the general public,” which are defined as communications:

(1) disseminated to the general public through direct mail or in the form of a paid advertisement in a newspaper, magazine, or other printed publication of general circulation or aired on radio, television, or other broadcast medium, and

(2) which explicitly supports or opposes a particular item or items of legislation or regulation, or the content of which can reasonably be understood, irrespective of whether the communication is addressed to the general public or to persons in public office or employment, as intended to influence legislation or to influence regulation.

Id. § 52:13C-20(s).

(c) Forms of Grassroots Lobbying Communications Regulated. The forms of grassroots lobbying communications that are covered are those that are made through “direct mail or in the form of a paid advertisement in a newspaper, magazine, or other printed publication of general circulation or aired on radio, television, or other broadcast medium.” *Id.*

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(d) Grassroots Lobbying Reference to Specific Legislation. The definition of a regulated lobbying “communication with the general public” is quite broad and does not appear to necessarily require a reference to specific legislation in order for the communication to be regulated. *See id.*

(e) Grassroots Lobbying Registration and Reporting Thresholds. Reporting is required for grassroots lobbying if the person or entity receives contributions or makes expenditures for regulated “communication[s] with the general public” that exceed \$2,500 per calendar year. *Id.* § 52:13C-22.1.

(f) Donor Disclosure for Grassroots Lobbying. If lobbying is the “major purpose” of the person or entity sponsoring grassroots lobbying, donor disclosure is required. 19:25-20.10(2).

Donor disclosure also is required for any person or entity if funds were given to the person or entity “with the specific intent” that the funds be used for lobbying. *Id.*

(g) Earmarked Donor Disclosure for Grassroots Lobbying. If lobbying is the “major purpose” of the person or entity sponsoring grassroots lobbying, donor disclosure is required. 19:25-20.10(2).

Donor disclosure also is required for any person or entity if funds were given to the person or entity “with the specific intent” that the funds be used for lobbying. *Id.*

(h) Donor Disclosure Threshold for Grassroots Lobbying (If Not Limited to Earmarked Donors). If disclosure is required for non-earmarked donations, donors that have given a total of more than \$100 during the calendar year are required to be disclosed by name and address. *Id.*

(i) Threshold Indexing (If Grassroots Lobbying Is Regulated). The reporting and donor disclosure thresholds for grassroots lobbying do not appear to be indexed for inflation. *See id.* § 52:13C-22.1.

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Note: As a general matter, and except where noted, this survey is based on states' statutes, and the following New Mexico analysis is based on New Mexico's statutes as of April 2018. The New Mexico Secretary of State issued regulations that went into effect on October 10, 2017 that impact many of the issues addressed below. *See* N.M. Admin. Code § 1.10.13.1 *et seq.*

I. FALSE POLITICAL SPEECH LAW

New Mexico does not appear to have a false political speech law.

II. DEFINITION OF EXPENDITURE/EXPRESS ADVOCACY

New Mexico law regulates political committees and political activity primarily on the basis of whether a group of persons spends money “to conduct an advertising campaign for a political purpose.” N.M. Stat. § 1-19-26(L)(3) .

A “political purpose” is defined as “*influencing or attempting to influence an election or pre-primary convention, including a constitutional amendment or other question submitted to the voters.*” *Id.* § 1-19-26(M) (emphasis added).

III. ELECTIONEERING COMMUNICATIONS

New Mexico does not appear to regulate electioneering communications.

IV. DONOR DISCLOSURE FOR INDEPENDENT EXPENDITURES MADE BY ENTITIES THAT ARE NOT PACS

New Mexico does not require reporting of IEs by entities that are not PACs.

(However, there is a very low monetary threshold under the statute for PAC registration and reporting.)

V. DISCLAIMER REQUIREMENTS FOR INDEPENDENT EXPENDITURES AND ELECTIONEERING COMMUNICATIONS

(a) Form of Disclaimer. The New Mexico regulations only specify content that must be included in required disclaimers, and do not specify whether such disclaimers must be written or spoken (as/where applicable). *See* N.M. Stat. §§ 1-19-16, -17, and -26.3.

(b) Content of Disclaimer. For certain printed materials and telephone calls, the disclaimer must state the name of the sponsor, and it appears the name of “[a]ny printing establishment” that printed the materials (where applicable) also may be required in the disclaimer. *Id.*

(c) Types of Media Covered. The following media are specifically covered by the disclaimer requirements:

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- “handbills, petitions, circulars, letters or similar written material”; and
- (for political committees only) any series “of five hundred or more calls that are similar in nature made during an election cycle by an individual or individuals, or by electronic means.”

Id.

(d) Exceptions. There are no specific exceptions to the disclaimer requirements. *See id.*

VI. STATUTORY OR REGULATORY AUTHORITY FOR SUPER PACS

The New Mexico statute does not appear to formally provide for super PACs.

VII. MAJOR/PRIMARY PURPOSE FOR PAC STATUS

It is unclear on the face of New Mexico’s statutory PAC definition whether there is a “primary purpose” limitation.

A “political committee” is defined as:

two or more persons, other than members of a candidate's immediate family or campaign committee or a husband and wife who make a contribution out of a joint account, who are selected, appointed, chosen, associated, *organized or operated primarily for a political purpose*; and “political committee” includes:

- (1) political parties, political action committees or similar organizations composed of employees or members of any corporation, labor organization, trade or professional association or any other similar group that raises, collects, expends or contributes money or any other thing of value for a political purpose;
- (2) a single individual whose actions represent that the individual is a political committee; and
- (3) a person or an organization of two or more persons that within one calendar year expends funds in excess of five hundred dollars (\$500) to conduct an advertising campaign for a political purpose;

Id. § 1-19-26(L).

It is unclear whether the “primarily for a political purpose” limitation applies to a single individual, or to a group of individuals that spend more than \$500 on political advertising, or whether the latter activity may, on its own, trigger political committee status.

(Indeed, in *New Mexico Youth Organized v. Herrera*, 611 F.3d 669, 675 (10th Cir. 2010), the court confirmed that the statute is susceptible to a reading that does not require a “primary purpose” for a group to be regulated as a political committee, but nonetheless imposed one to render the statute constitutional.)

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VIII. PAC STATUS DETERMINATION AND THRESHOLDS

(a) PAC Definition. Based on the statutory definition alone, it appears that, in addition to raising, collecting, expending, or contributing money “for a political purpose,” an organization may also be regulated as a PAC if it is “organized or operated primarily for a political purpose.” N.M. Stat. § 1-19-26(L).

A “political purpose” is defined as “influencing or attempting to influence an election or pre-primary convention, including a constitutional amendment or other question submitted to the voters.” *Id.* § 1-19-26(M).

The definition of “political purpose” is so vague and broad as to be virtually meaningless.

(b) Threshold for PAC Registration/Reporting. It does not appear that there is any threshold for regulation as a PAC based on “rais[ing], collect[ing], expend[ing] or contribut[ing] money . . . for a political purpose.” The threshold for regulation as a PAC based on “conduct[ing] an advertising campaign for a political purpose” is \$500 per calendar year. *Id.* § 1-19-26(L).

This threshold does not appear to be adjusted for inflation. *See id.*

(c) Threshold for Disclosure of PAC Donors. It appears that contributors’ names and addresses are required to be disclosed if they make contributions of any amount. *Id.* § 1-19-31(A)(1). Contributors who give a total of \$250 or more “per election” also must have their “occupation or type of business” disclosed. *Id.* § 1-19-31(A)(2).

(d) Disclosure of Donors’ Employer Information on PAC Reports. Donors’ employer information does not appear to be required. *See id.*

IX. REGULATION OF “INCIDENTAL COMMITTEES”

New Mexico does not appear to regulate “incidental committees.”

X. PRIVATE ENFORCEMENT ACTIONS

The Secretary of State appears to have exclusive authority to impose civil fines or to refer violations for civil or criminal prosecution. *See id.* §§ 1-19-34.4 and -36.

XI. COORDINATION

New Mexico law does not appear to address coordination.

XII. LOBBYING

(a) General Lobbyist/Lobbyist Principal Donor Disclosure. Donor disclosure does not appear to be required on lobbying registrations or reports. *See id.* §§ 2-11-3 and -6.

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(b) Grassroots Lobbying. Grassroots lobbying is regulated in New Mexico.

If “[a]n organization of two or more persons, including an individual who holds himself out as an organization,” that is not otherwise required to register or report as a lobbyist spends in excess of \$2,500 “to conduct an advertising campaign for the purpose of lobbying,” that organization must register and report with the Secretary of State. *Id.* § 2-11-6(I).

“Lobbying” is defined as “attempting to influence: (1) a decision related to any matter to be considered or being considered by the legislative branch of state government or any legislative committee or any legislative matter requiring action by the governor or awaiting action by the governor; or (2) an official action.” *Id.* § 2-11-2(D).

(c) Forms of Grassroots Lobbying Communications Regulated. The New Mexico law is not specific in terms of which forms of “advertising” are regulated under the grassroots lobbying law. *Id.* § 2-11-6(I).

(d) Grassroots Lobbying Reference to Specific Legislation. References to specific legislation do not appear to be required in order for a communication to be regulated as lobbying. *See id.* § 2-11-2(D).

(e) Grassroots Lobbying Registration and Reporting Thresholds. Registration and reporting are required for grassroots lobbying if the person or entity spends more than \$2,500 per calendar year on grassroots lobbying. *Id.* § 2-11-6(I).

(f) Donor Disclosure for Grassroots Lobbying. Some donor disclosure is required if an entity registers and reports solely as a sponsor of grassroots lobbying. *See id.*

(g) Earmarked Donor Disclosure for Grassroots Lobbying. Donor disclosure appears to be limited to earmarked donations.

Specifically, an organization that registers and reports solely as a sponsor of grassroots lobbying is required to report any “contributions, pledges to contribute, expenditures and commitments *to expend for the advertising campaign for the purpose of lobbying.*” *Id.* (emphasis added).

(h) Donor Disclosure Threshold for Grassroots Lobbying (If Not Limited to Earmarked Donors). N/A

(i) Threshold Indexing (If Grassroots Lobbying Is Regulated). The threshold for grassroots lobbying registration and reporting does not appear to be indexed for inflation. *See id.*

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I. FALSE POLITICAL SPEECH LAW

New York does not appear to have a false political speech law.

II. DEFINITION OF EXPENDITURE/EXPRESS ADVOCACY²⁶

New York regulates independent expenditures using not only a *Buckley* express advocacy standard, but also a mere reference standard within 30/60 days before a primary/general election, as well as an open-ended “promotes, supports, attacks, or opposes” standard beginning on January 1 of the calendar year in which a candidate referenced in a communication is up for election.

An “independent expenditure” is defined to mean certain communications which:

(1) irrespective of when such communication is made, contains words such as “vote,” “oppose,” “support,” “elect,” “defeat,” or “reject,” which call for the election or defeat of the Clearly Identified Candidate;

(2) refers to and Advocates For or Against a Clearly Identified Candidate or ballot proposal on or after January 1st of the year of the election in which such candidate is seeking office or such proposal shall appear on the ballot; or

(3) within 60 days before a general or special election for the office sought by the candidate or 30 days before a primary election, includes or references a clearly identified candidate.

(i) For purposes of this regulation Advocates for or Against means—in the absence of explicit words of advocacy for or against a candidate or ballot proposal—that the expenditure, through the use of images, photos, or language, promotes, supports, attacks, or opposes the Clearly Identified Candidate or ballot proposal.

(ii) For purposes of determining that a communication is advocating for or against a candidate or ballot proposal, the following factors shall be considered, but shall not be limited to:

(A) Whether it identifies a particular candidate by name or other means such as party affiliation or distinctive features of a candidate's platform or biography or identifies a ballot proposal;

(B) Whether it expresses approval or disapproval for said candidate's positions or actions or for a ballot proposal;

(C) Whether it refers to a candidate or ballot proposal and is part of an ongoing series by the group on the same issue and the expenditure is made on or after January 1st of the year of

²⁶ Please note that the analysis for this variable is especially susceptible to change due to the “emergency regulations” issued by the state Board of Elections. See N.Y. State Bd. of Elections, Independent Expenditure Reporting, at <http://www.elections.ny.gov/independentexpenditurereporting.html>. “Emergency regulations” are effective for 90 days, unless the agency adopts the regulations pursuant to the normal rulemaking process. See N.Y. Admin. Procedure Act § 202(6)(b).

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the election in which such candidate is seeking office or such proposal shall appear on the ballot;

(D) Whether the issue raised in the communication has been raised as a distinguishing characteristic amongst the referenced candidates; and

(E) Whether its timing and the identification of the candidate are related to a vote on legislation or a position on legislation by an officeholder who is also a candidate and is made on or after January first of the year of the election in which such candidate is seeking office.

(iii) For purposes of determining that a communication is not advocating for or against a candidate or ballot proposal, the following factors shall be considered, but shall not be limited to:

(A) Whether it is part of an ongoing series by the group on the same issue and does not refer to a candidate or ballot proposal; and

(B) Whether its timing and the identification of the candidate or ballot proposal are related to a non-electoral event (e.g. a vote on legislation or a position on legislation by an officeholder who is also a candidate) and is not made on or after January 1st of the year of the election in which such candidate is seeking office or such proposal shall appear on the ballot.

(iv) However, even if some of the above factors in (ii) or (iii) are found, the communication must still be considered in its context before arriving at any conclusion.

9 N.Y. Code of Rules and Regs. § 6200.10(b)(1).

III. ELECTIONEERING COMMUNICATIONS

(a) Regulation of ECs. New York effectively regulates electioneering communications under the “independent expenditure” definition discussed in Section II. *See id.* § 6200.10(b)(1)(c)(3).

(b) What Content Triggers Regulation as an Electioneering Communication. Communications that, “within 60 days before a general or special election for the office sought by the candidate or 30 days before a primary election, *includes or references a clearly identified candidate*” are regulated. *Id.* (emphasis added).

(c) Types of Media Covered. The following types of media are covered if a communication is “conveyed to 500 or more members of a General Public Audience”:

(a) an audio or video communication via broadcast, cable or satellite;

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- (b) a written communication via advertisements, pamphlets, circulars, flyers, brochures, letterheads; or
- (c) other published statements.

Id. and *id.* § 6200.10(b)(1).

(d) Reporting Threshold. It appears that there is no monetary threshold for being required to register and report prior to making an “independent expenditure” (including ECs). *See id.* § 6200.10(c)(1); *see also* N.Y. Election Law § 14-107(3).

(*See also* N.Y. State Bd. of Elections Form CF-02 (rev. Oct. 2016 v.2) at 4, *available at* http://www.elections.ny.gov/NYSBOE/download/finance/CF02IE_IndependentExpenditureCommitteeType8CFRegForm.pdf (instructing that a sponsor must register “prior to receiving or expending *any funds*”) (emphasis added).)

(e) Time Windows. The EC time window is limited to 30 days before a primary and 60 days before a general election. 9 N.Y. Code of Rules and Regs. § 6200.10(b)(1)(c)(3).

(f) Jurisdictional Limitation. There is no jurisdictional limitation for when a communication referencing a candidate is regulated. *See id.*

(g) Donor Disclosure. It appears that broad donor disclosure is required for sponsoring ECs.

Sponsors of independent expenditures (including ECs) are required to “comply with all disclosure obligations required for political committees by law and regulation.” *Id.* § 6200.10(c)(2). Political committees are subject to broad donor disclosure requirements that do not appear to be limited to contributions earmarked for specific political activity. *See* N.Y. Election Law § 14-102(1).

Sponsors of independent expenditures also are specifically required to disclose “[a]dditional [i]nformation” about “any person providing a contribution, gift, loan, advance or deposit of \$1,000 or more *for the Independent Expenditure.*” 9 N.Y. Code of Rules and Regs. § 6200.10(e)(1)(ii) (emphasis added).

Because the earmarked donor disclosure appears to be “additional information” on top of the general donor disclosure requirements for political committees, donor disclosure does not appear to be limited to donors of earmarked funds.

There also does not appear to be any allowance under which donors may avoid disclosure if they prohibit their donations from being used to fund IEs, or whereby disclosure may be limited to donors to a segregated account that is used to fund IEs.

(h) 501(c)(3) Exemption. There is a limited exemption under for:

internal communications *by members to other members* of a membership organization of not more than five hundred members or communications by a

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corporation organized for charitable purposes pursuant to § 501(c)(3) of the internal revenue code, within sixty days before a general or special election for the office sought by the candidate or thirty days before a primary election, that includes or references a clearly identified candidate but does not otherwise qualify as an independent expenditure under this section.

N.Y. Election Law § 14-107(1)(b)(iv).

(i) Media Exemption. An independent expenditure (including an electioneering communication) does not include any “written news story, commentary, or editorial or a news story, commentary, or editorial distributed through the facilities of any broadcasting station, cable or satellite unless such publication or facilities are owned or controlled by any political party, political committee or candidate.” *Id.* § 14-107(1)(b)(i).

(j) Other Exemptions. Other exemptions apply for:

(ii) a communication that constitutes a candidate debate or forum; or . . .

(iii) internal communication by members to other members of a membership organization of not more than five hundred members, for the purpose of supporting or opposing a candidate or candidates for elective office, provided such expenditures are not used for the costs of campaign material or communications used in connection with broadcasting, telecasting, newspapers, magazines, or other periodical publication, billboards, or similar types of general public communications; or . . .

(v) a communication published on the Internet, unless the communication is a paid advertisement.

Id. § 14-107(1)(b).

IV. **DONOR DISCLOSURE FOR INDEPENDENT EXPENDITURES MADE BY ENTITIES THAT ARE NOT PACS**

As discussed above in Section III(d) with respect to electioneering communications, all sponsors of independent expenditures (of any amount) must register and report as political committees. *See* 9 N.Y. Code of Rules and Regs. § 6200.10(c)(1); *see also* N.Y. Election Law § 14-107(3).

V. **DISCLAIMER REQUIREMENTS FOR INDEPENDENT EXPENDITURES AND ELECTIONEERING COMMUNICATIONS**

(a) Form of Disclaimer. The New York law only specifies content that must be included in required disclaimers and does not specify whether such disclaimers must be written or spoken (as/where applicable). *See* N.Y. Election Law § 14-107(2).

(b) Content of Disclaimer. For any person or entity that sponsors independent expenditures totaling \$1,000 or more, that person’s or entity’s IE communications must “clearly state the name of the person who paid for, or otherwise published or distributed

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the communication and state, with respect to communications regarding candidates, that the communication was not expressly authorized or requested by any candidate, or by any candidate's political committee or any of its agents." *See id.*

(c) Types of Media Covered. There are no particular types of media that the disclaimer requirement applies to or is limited to. *See id.*

(d) Exceptions. There are no specific exceptions to the disclaimer requirements. *See id.*

VI. STATUTORY OR REGULATORY AUTHORITY FOR SUPER PACS

Although the New York statute provides for "independent expenditure committees," *see* N.Y. Election Law § 14-100(15), the statute does not appear to exempt such committees from the corporate contribution limits and general contribution limits. *See id.* and *id.* § 14-116.

(Nonetheless, IFS is aware that federal courts have permitted New York state super PACs to be formed. *See New York Progress and Protection PAC v. Walsh*, 17 F.Supp.3d 319 (S.D.N.Y. 2014); *Hispanic Leadership Fund, Inc. v. Walsh*, 42 F.Supp.3d 365 (N.D.N.Y. 2014).)

VII. MAJOR/PRIMARY PURPOSE FOR PAC STATUS

New York does not have a major or primary purpose standard in its PAC definition. *See* N.Y. Election Law § 14-100(1).

VIII. PAC STATUS DETERMINATION AND THRESHOLDS

(a) PAC Definition. New York's PAC definition is not tied to accepting "contributions" or making "expenditures."

A "political committee" is defined, in relevant part, as:

any corporation *aiding or promoting* and any committee, political club or combination of one or more persons *operating or co-operating to aid or to promote the success or defeat* of a political party or principle, or of any ballot proposal; or to *aid or take part in the election or defeat* of a candidate for public office or to *aid or take part in the election or defeat* of a candidate for nomination at a primary election or convention, including all proceedings prior to such primary election, or of a candidate for any party position voted for at a primary election, or to *aid or defeat the nomination* by petition of an independent candidate for public office

Id. (emphasis added).

(b) Threshold for PAC Registration/Reporting. There is no threshold for registering and reporting as a PAC. *See id.* §§ 14-100(1), -102, and -118(1).

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(See also N.Y. State Bd. of Elections, Frequently Asked Questions, at <https://www.elections.ny.gov/CampaignFinanceFAQ.html>.)

Since there is no threshold, there is nothing that is adjusted for inflation. *See id.*

(c) Threshold for Disclosure of PAC Donors. Contributors' names and addresses are required to be disclosed if they make contributions totaling more than \$99. *Id.* § 14-102(1).

(It does not appear to be clear over what period of time this \$99 threshold applies. However, IFS is aware that the State Board of Elections guidance explains the threshold applies over a calendar year for PACs. *See* N.Y. State Bd. Of Elections, Campaign Finance Handbook 2014 at 73, available at <http://www.elections.ny.gov/NYSBOE/download/finance/hndbk2014.pdf>.)

(d) Disclosure of Donors' Employer Information on PAC Reports. Donors' employer information is not required. *See id.*

IX. REGULATION OF "INCIDENTAL COMMITTEES"

New York does not separately regulate "incidental committees." (However, as discussed above in Sections III, IV, VII, and VIII, all political committees are essentially "incidental committees.")

X. PRIVATE ENFORCEMENT ACTIONS

Although the State Board of Elections generally has enforcement authority, *see* N.Y. Election Law § 3-104, "any candidate" or "any five qualified voters" may petition a court to compel "any person required to file a [campaign finance report], who has not filed any such statement within the time prescribed by this chapter, to file such statement within five days after notice of the order." *Id.* § 16-114.

XI. COORDINATION

(a) "Content Prong." As discussed above in Section II, "independent expenditures" include not only *Buckley* express advocacy, but also communications that merely refer to candidates within 30/60 days before a primary/general election, as well as any communication that "promotes, supports, attacks, or opposes" a candidate beginning on January 1 of the calendar year in which a candidate referenced in a communication is up for election. 9 N.Y. Code of Rules and Regs. § 6200.10(b)(1).

(b) Former Employee/Vendor "Conduct Prong." The coordination rule covers the use of any vendors and employees of the candidate within the prior 2 years of the election in which the candidate is running. *Id.* § 6200.10(2)(ii)(a)(3) and (8).

The coordination rule also covers the use of a candidate's "immediate family member." *Id.* § 6200.10(2)(ii)(a)(4).

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(c) **Public Information Exemption.** Exemptions exist for use of “materials” and information about a candidate’s “campaign plans, projects, or activities” obtained from a “publicly available source.” *Id.* § 6200.10(2)(ii)(a)(5) and (7).

XII. LOBBYING

(a) **General Lobbyist/Lobbyist Principal Donor Disclosure.** Donor disclosure is required on lobbying reports if, over a 12-month period, a registered lobbying entity spends more than \$15,000 *and* at least 3% of its total expenditures on New York lobbying. N.Y. Legis. Law § 1-h(c)(4).

Donor disclosure is for the source of any funds of more than \$2,500 (apparently, over any period of time) “used to fund the lobbying activities reported.” *Id.* § 1-h(c)(4)(ii).

(Note: There is a general exemption to the donor disclosure requirement for 501(c)(3) entities. However, if a 501(c)(3) makes “any in-kind donations of staff, staff time, personnel, offices, office supplies, financial support of any kind or any other resources to any” 501(c)(4) entity of more than \$2,500, “the entity receiving such in-kind donations shall disclose the fair market value and identify the I.R.C. 501(c)(3) entity providing such in-kind donations and give notice within a reasonable time to the 501(c)(3) entity that it shall be required to file a report with the department of law pursuant to section one hundred seventy-two-e of the executive law [*sic*].” *Id.* § 1-h(c)(4)(ii)(i) [*sic*]. It is not entirely clear what reporting requirement the 501(c)(3) entity would be subject to in this instance, since the referenced statutory provision does not appear to exist (either as N.Y. Exec. Law § 172-e or 172e or 172(e)).)

(b) **Grassroots Lobbying.** The definition of lobbying in New York is broad enough that it appears to cover grassroots lobbying.

“Lobbying” is defined, in relevant part, as “*any attempt to influence:*”

(i) the passage or defeat of any legislation or resolution by either house of the state legislature including but not limited to the introduction or intended introduction of such legislation or resolution or approval or disapproval of any legislation by the governor;

(ii) the adoption, issuance, rescission, modification or terms of a gubernatorial executive order;

(iii) the adoption or rejection of any rule or regulation having the force and effect of law by a state agency; . . .

(vii) the passage or defeat of any local law, ordinance, resolution, or regulation by any municipality or subdivision thereof;

(viii) the adoption, issuance, rescission, modification or terms of an executive order issued by the chief executive officer of a municipality;

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(ix) the adoption or rejection of any rule, regulation, or resolution having the force and effect of a local law, ordinance, resolution, or regulation; . . .

Id. § 1-c(c) (emphasis added).

(IFS is also aware that the Joint Commission on Public Ethics has interpreted “lobbying” to include grassroots lobbying, *see, e.g.*, JCOPE Adv. Op. No. 16-01 and Temporary State Comm’n on Lobbying Adv. Op. Nos. 44, 43, 39, and 36, and a pending rulemaking by the agency also would formalize that interpretation.)

(c) Forms of Grassroots Lobbying Communications Regulated. New York law is not specific in terms of which forms of “advertising” are regulated as grassroots lobbying. *See id.*

(d) Grassroots Lobbying Reference to Specific Legislation. References to specific legislation do not appear to be required in order for a communication to be regulated as lobbying. *See id.*

(*See, e.g., N.Y. Civil Liberties Union v. Grandeau*, 305 F. Supp. 2d 327 (S.D.N.Y. 2004; 453 F. Supp. 2d 800 (S.D.N.Y. 2006); 528 F.3d 122, 133 (2nd Cir. 2008). The pending JCOPE rulemaking also may address this.)

(e) Grassroots Lobbying Registration and Reporting Thresholds. Registration and are required for lobbying/grassroots lobbying if the lobbyist receives or spends more than a total of \$5,000 per calendar year on lobbying/grassroots lobbying. N.Y. Legis. Law § 1-e(a)(1).

(Lobbyist employers/principals/entities are not technically required to register, although, as a matter of practice, it is common for employers/principals/entities to register themselves and their in-house lobbyists.)

Reporting is required for both lobbyists and lobbyist employers/principals/entities if more than \$5,000 is spent per calendar year on lobbying/grassroots lobbying. *Id.* and *id.* §§ 1-h and 1-j.

(f) Donor Disclosure for Grassroots Lobbying. Donor disclosure is required on the same basis as donor disclosure for lobbying generally. *See* Section XII(a) above.

(g) Earmarked Donor Disclosure for Grassroots Lobbying. Donor disclosure does not appear to be limited to donations earmarked for grassroots lobbying. *See* Section XII(a) above.

(h) Donor Disclosure Threshold for Grassroots Lobbying (If Not Limited to Earmarked Donors). Donor disclosure is required for the source of any funds of more than \$2,500 (apparently, over any period of time). *See* Section XII(a) above.

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(i) Threshold Indexing (If Grassroots Lobbying Is Regulated). The lobbying reporting and donor disclosure thresholds do not appear to be indexed for inflation. *See* N.Y. Legis. Law §§ 1-e(a)(1), 1-h, and 1-j.

NORTH CAROLINA

I. FALSE POLITICAL SPEECH LAW

It is a misdemeanor under North Carolina law to “publish or cause to be circulated derogatory reports” referencing a candidate (i) when the circulating entity either knows that the reports are false or acts “in reckless disregard of its truth or falsity” and (ii) “when such [a] report is calculated or intended to affect the chances” of the nomination or election of the candidate referenced. N.C. Gen. Stat. § 163-274(8).

II. DEFINITION OF EXPENDITURE/EXPRESS ADVOCACY

North Carolina regulates expenditures and independent expenditures using a *Buckley/MCFL* standard.

An “expenditure” is defined as:

any purchase, advance, conveyance, deposit, distribution, transfer of funds, loan, payment, gift, pledge or subscription of money or anything of value whatsoever, whether or not made in an election year, and any contract, agreement, or other obligation to make an expenditure, *to support or oppose* the nomination, election, or passage of one or more clearly identified candidates, or ballot measure . . . Supporting or opposing the election of clearly identified candidates includes supporting or opposing the candidates of a clearly identified political party . . .

N.C. Gen. Stat. § 278.6(9); *see also id.* § 278.6(9a) (defining “independent expenditure”).

Expenditures made “to support or oppose the nomination or election of one or more clearly identified candidates” are:

communications to the general public that use phrases such as “vote for”, “reelect”, “support”, “cast your ballot for”, “(name of candidate) for (name of office)”, “(name of candidate) in (year)”, “vote against”, “defeat”, “reject”, “vote pro-(policy position)” or “vote anti-(policy position)” accompanied by a list of candidates clearly labeled “pro-(policy position)” or “anti-(policy position)”, or communications of campaign words or slogans, such as posters, bumper stickers, advertisements, etc., which say “(name of candidate)’s the One”, “(name of candidate) ’98”, “(name of candidate)!” , or the names of two candidates joined by a hyphen or slash.

Id. § 163-278.14A(a).

III. ELECTIONEERING COMMUNICATIONS

(a) **Regulation of ECs.** North Carolina regulates electioneering communications. *See id.* §§ 163-278.6(9j) and -278.12C.

(b) **What Content Triggers Regulation as an Electioneering Communication.** Certain communications that “refer[] to a clearly identified candidate for elected office” are regulated as ECs. *Id.* § 163-278.6(8j)(a).

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(c) Types of Media Covered. The EC law covers certain “broadcast, cable, or satellite communication, or mass mailing, or telephone bank” communications. *Id.* § 163-278.6(8j).

(d) Reporting Threshold. The threshold for reporting is sponsoring ECs totaling more than \$5,000 (apparently, over any period of time). *Id.* § 163-278.12C(a).

(e) Time Windows. The EC time window covers any communication that, “[i]n the case of the general election in November of the even-numbered year is aired or transmitted after September 7 of that year, and in the case of any other election is aired or transmitted within 60 days of the time set for absentee voting to begin . . . in an election for that office.” *Id.* § 163-278.6(b).

(f) Jurisdictional Limitation. The EC law requires that communications reach certain minimum numbers of individuals in order to be regulated as ECs. *See id.* § 163-278.6(c).

(g) Donor Disclosure. Donor disclosure is limited to earmarked donations.

Specifically, EC reports must identify “[t]he names and addresses of all entities that donated, to further an electioneering communication or electioneering communications, funds or anything of value whatsoever in an aggregate amount of more than one thousand dollars . . . during the reporting period.” *Id.* § 163-278.12C(a)(5).

A donation is “deemed to have been donated to further the electioneering communication” if any of the following four criteria is met:

- (1) The donor designates, requests, or suggests that the donation be used for an electioneering communication or electioneering communications, and the filer agrees to use the donation for that purpose.
- (2) The filer expressly solicited the donor for a donation for making or paying for an electioneering communication.
- (3) The donor and the filer engaged in substantial written or oral discussion regarding the donor’s making, donating, or paying for an electioneering communication.
- (4) The donor or the filer knew or had reason to know of the filer’s intent to make electioneering communication with the donation.

Id. § 163-278.12C(c).

(h) 501(c)(3) Exemption. North Carolina’s EC law does not appear to have an exemption for 501(c)(3) entities.

(i) Media Exemption. The definition of an EC exempts “A communication appearing in a news story, commentary, or editorial distributed through the facilities of any broadcasting station, unless those facilities are owned or controlled by any political party, affiliated party committee, political committee, or candidate.” *Id.* § 163-278.6(8k)(a).

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In addition, a “communication made by a news medium, as defined in G.S. 8-53.11(a)(3), if the communication is in print” is exempt from the EC law. *Id.* § 163-278.6(8k)(g).

(j) Other Exemptions. Other exemptions apply for:

c. A communication that constitutes a candidate debate or forum conducted pursuant to rules adopted by the Board or that solely promotes that debate or forum and is made by or on behalf of the person sponsoring the debate or forum.

d. A communication made while the General Assembly is in session which, incidental to advocacy for or against a specific piece of legislation pending before the General Assembly, urges the audience to communicate with a member or members of the General Assembly concerning that piece of legislation or a solicitation of others as defined in G.S. 120C-100(a)(13) properly reported under Chapter 120C of the General Statutes.

e. A communication that meets all of the following criteria:

1. Does not mention any election, candidacy, political party, opposing candidate, or voting by the general public.

2. Does not take a position on the candidate's character or qualifications and fitness for office.

3. Proposes a commercial transaction.

f. A public opinion poll conducted by a news medium, as defined in G.S. 8-53.11(a)(3), conducted by an organization whose primary purpose is to conduct or publish public opinion polls, or contracted for by a person to be conducted by an organization whose primary purpose is to conduct or publish public opinion polls. This sub-subdivision shall not apply to a push poll. For the purpose of this sub-subdivision, “push poll” shall mean the political campaign technique in which an individual or organization attempts to influence or alter the view of respondents under the guise of conducting a public opinion poll.

Id. § 163-278.6(8k).

IV. **DONOR DISCLOSURE FOR INDEPENDENT EXPENDITURES MADE BY ENTITIES THAT ARE NOT PACS**

(a) Donor Disclosure. Donor disclosure is limited to earmarked donations.

Specifically, IE reports are required to include “the identification of each person or entity making a donation of more than one hundred dollars (\$100.00) to the entity filing the report *if the donation was made to further the reported independent expenditure or contribution.* If the donor is an individual, the statement shall also contain the principal occupation of the donor.” *Id.* § 163-278.12(c) (emphasis added).

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A donation is “deemed to have been donated to further the reported independent expenditure” if any of the following four criteria is met:

- (1) The donor designates, requests, or suggests that the donation be used for an independent expenditure or for multiple independent expenditures, and the filer agrees to use the donation for an independent expenditure.
- (2) The filer expressly solicited the donor for a donation for making or paying for an independent expenditure.
- (3) The donor and the filer engaged in substantial written or oral discussion regarding the donor’s making, donating, or paying for an independent expenditure.
- (4) The donor or the filer knew or had reason to know of the filer’s intent to make independent expenditures with the donation.

Id. § 163-278.12(f).

(b) Threshold for Donor Disclosure. Disclosure is required for donors who give more than \$100 of earmarked donations to the sponsor of the IE. *Id.* § 163-278.12(c).

V. DISCLAIMER REQUIREMENTS FOR INDEPENDENT EXPENDITURES AND ELECTIONEERING COMMUNICATIONS

(a) Form of Disclaimer. In addition to the general disclaimer content requirements for IEs and ECs, IE and EC television ads are required to have a “visual” disclaimer. *Id.* § 163-278.39(a)(1).

(b) Content of Disclaimer. A print, radio, or television advertisement that is “an expenditure, independent expenditure, electioneering communication, or contribution required to be disclosed” must include the following: “Paid for by [Name of candidate, candidate campaign committee, political party organization, political action committee, referendum committee, individual, or other sponsor].” N.C. Gen. Stat. § 163-278.39(a). Print advertisements also must include a statement stating that the ad was either ““Authorized by [name of candidate], candidate for [name of office] or ‘Not authorized by a candidate.’” *Id.* § 163-278.39(a)(5).

(c) Types of Media Covered. The disclaimer requirements apply to print, radio, and television advertisements. N.C. Gen. Stat. § 163-278.39(a).

(d) Exceptions. There are no specific exceptions to the disclaimer requirements. *See id.*

VI. STATUTORY OR REGULATORY AUTHORITY FOR SUPER PACS

The North Carolina statute does not appear to provide for super PACs.

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(Nonetheless, IFS is aware that the North Carolina Board of Elections has recognized super PACs by advisory opinion. *See* N.C. Bd. of Elections, Adv. Op., Apr. 13, 2012.)

VII. MAJOR/PRIMARY PURPOSE FOR PAC STATUS

A “political committee” is a combination “of two or more individuals, such as any person, committee, association, organization, or other entity that makes, or accepts anything of value to make, contributions or expenditures” and “[h]as *the major purpose* to support or oppose the nomination or election of one or more clearly identified candidates.” N.C. Gen. Stat. § 163-278.6(14) (emphasis added).

VIII. PAC STATUS DETERMINATION AND THRESHOLDS

(a) PAC Definition. A “political committee” is a combination “of two or more individuals, such as any person, committee, association, organization, or other entity that makes, or accepts anything of value to make, *contributions or expenditures*” and “[h]as *the major purpose* to support or oppose the nomination or election of one or more clearly identified candidates.” *Id.* (emphasis added).

(b) Threshold for PAC Registration/Reporting. It does not appear that there is any threshold for registering and reporting as a PAC. *See id.* § 163-278.9(a)(1).

(*See also* N.C. State Bd. of Elections, 2014 Campaign Finance Manual at 58-61, *available at* <http://www.ncsbe.gov/Portals/0/FilesP/CFFiles/CFUserManualv2014.pdf>.)

Since there is no threshold, there is nothing that is adjusted for inflation. *See id.*

(c) Threshold for Disclosure of PAC Donors. All donors who contributed \$50 or more “during an election” must be reported. *Id.* § 163-278.11(a)(1) and (a1). The primary and general elections count as separate elections. *See id.* and *id.* § 163-278.13.

(d) Disclosure of Donors’ Employer Information on PAC Reports. The “specific field of business activity” of a contributor’s employer, as determined from “a schedule of specific fields” issued by the State Board of Elections, may be disclosed instead of the name of a contributor’s employer. *Id.* § 163-278.11(a)(1)(b).

IX. REGULATION OF “INCIDENTAL COMMITTEES”

North Carolina does not appear to separately regulate “incidental committees.”

X. PRIVATE ENFORCEMENT ACTIONS

Although the Board of Elections is empowered to investigate and refer cases to the appropriate district attorney for prosecution, *id.* §§ 163-278.22(8), 163-278.27(b), (c), North Carolina registered voters also may themselves file a written complaint under oath that a report or other statement is either inaccurate or needs to be filed, *id.* § 163-278.23.

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Further, if the Board refers a case to a district attorney and no prosecution takes place within 45 days, then any registered voter may petition a superior court to appoint a special prosecutor in the case. *Id.* § 163-278.28(b).

XI. COORDINATION

(a) “Content Prong.” Coordination covers both IEs and ECs. *See id.* § 163-278.6(6), (6g), and (9a). As discussed above in Section III, the time windows for regulating communications as ECs exceed 30 days before a primary or 60 days before a general election.

(b) Former Employee/Vendor “Conduct Prong.” The coordination concept does not appear to specifically cover the use of former employees or vendors. *See id.* § 163-278.6(6g).

(c) Public Information Exemption. An exemption to coordination exists for the use of information relating to a candidate's campaign, positions, or policies, that is obtained through publicly available resources, including a candidate campaign committee, is not a coordinated expenditure if it is not made in concert or cooperation with, or at the request or suggestion of, a candidate, the candidate campaign committee, the agent of the candidate, or the agent of the candidate campaign committee.

Id.

XII. LOBBYING

(a) General Lobbyist/Lobbyist Principal Donor Disclosure. Donor disclosure does not appear to be required on lobbying registrations or reports. *See id.* §§ 120C-200, -206, and -401 through -403.

(b) Grassroots Lobbying. North Carolina law contains special registration and reporting obligations for entities who solely engage in grassroots lobbying activity with respect to legislative or executive action and who are not otherwise required to register and report as lobbyists. *Id.* § 120C-215.

Grassroots activity, referred to in the statute as the “solicitation of others,” is defined as “[a] solicitation of members of the public to communicate directly with or contact one or more designated individuals to influence or attempt to influence legislative or executive action to further the solicitor’s position on that legislative or executive action, when that request is made by” certain enumerated methods. *Id.* § 120C-100(a)(13).

The term “solicitation of others” does not include communications made by a person or by the person’s agent to that person’s stockholders, employees, board members, officers, members, subscribers, or other recipients who have affirmatively assented to receive the person’s regular publications or notices. *Id.*

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(c) Forms of Grassroots Lobbying Communications Regulated. The following forms of grassroots communications are regulated:

- a. A broadcast, cable, or satellite transmission.
- b. An e-mail communication or a Web site posting.
- c. A communication delivered by print media as defined in G.S. 163-278.38Z.
- d. A letter or other written communication delivered by mail or by comparable delivery service.
- e. Telephone.
- f. A communication at a conference, meeting, or similar event.

Id. § 120C-100(a)(13).

(d) Grassroots Lobbying Reference to Specific Legislation. Grassroots lobbying appears to cover more than just references to specific legislation and also covers executive action.

Communications “to influence or attempt to influence legislative or executive action” are regulated. *Id.* § 120C-100(a)(13). “Legislative action” is defined as “[t]he preparation, research, drafting, introduction, consideration, modification, amendment, approval, passage, enactment, tabling, postponement, defeat, or rejection of a bill, resolution, amendment, motion, report, nomination, appointment, or other matter . . . by a legislator or legislative employee acting or purporting to act in an official capacity.” *Id.* § 120C-100(a)(5). This definition also includes “consideration of any bill by the Governor’s for the Governor’s approval or veto . . . or for the Governor to allow the bill to become law.” *Id.*

“Executive action” is defined as “[t]he preparation, research, drafting, development, consideration, modification, amendment, adoption, approval, tabling, postponement, defeat, or rejection of a policy, guideline, request for proposal, procedure, regulation, or rule by a public servant purporting to act in an official capacity.” *Id.* § 120C-100(a)(3).

(e) Grassroots Lobbying Registration and Reporting Thresholds. A person or entity engaged in grassroots lobbying is required to register with and report when, in any given 90-day period, its total costs expended for the “solicitation of others” exceed \$3,000. *Id.* § 120C-215.

(f) Donor Disclosure for Grassroots Lobbying. Donor disclosure does not appear to be required on grassroots lobbying reports. *See id.* § 120C-404.

(g) Earmarked Donor Disclosure for Grassroots Lobbying. N/A

(h) Donor Disclosure Threshold for Grassroots Lobbying (If Not Limited to Earmarked Donors). N/A

(i) Threshold Indexing (If Grassroots Lobbying Is Regulated). The grassroots lobbying registration and reporting threshold does not appear to be indexed for inflation. *See id.* § 120C-215.

NORTH DAKOTA

I. FALSE POLITICAL SPEECH LAW

North Dakota law provides that:

A person is guilty of a class A misdemeanor if that person knowingly, or with reckless disregard for its truth or falsity, publishes any political advertisement or news release that contains any assertion, representation, or statement of fact, including information concerning a candidate's prior public record, which is untrue, deceptive, or misleading, whether on behalf of or in opposition to any candidate for public office, initiated measure, referred measure, constitutional amendment, or any other issue, question, or proposal on an election ballot, and whether the publication is by radio, television, newspaper, pamphlet, folder, display cards, signs, posters, billboard advertisements, websites, electronic transmission, or by any other public means

N.D. Cent. Code § 16.1-10-04.

II. DEFINITION OF EXPENDITURE/EXPRESS ADVOCACY

An “expenditure” is defined, in relevant part, as “anything of value . . . made for *a political purpose* or *for the purpose of influencing* the passage or defeat of a measure.” *Id.* § 16.1-08.1-01(7)(a); *see also id.* § 16.1-08.1-01(9) (defining “independent expenditure”).

“Political purpose” is defined as:

any activity undertaken *in support of or in opposition to* the election or nomination of a candidate to public office and includes using “vote for”, “oppose”, or *any similar support or opposition language* in any advertisement whether the activity is undertaken by a candidate, a political committee, a political party, or any person. *In the period thirty days before a primary election and sixty days before a special or general election*, “political purpose” also means *any activity in which a candidate's name, office, district, or any term meaning the same as “incumbent” or “challenger” is used in support of or in opposition to the election or nomination of a candidate to public office.* The term does not include activities undertaken in the performance of a duty of a state office or any position taken in any bona fide news story, commentary, or editorial.

Id. § 16.1-08.1-01(14) (emphasis added).

III. ELECTIONEERING COMMUNICATIONS

North Dakota does not have an electioneering communications law in that it does not use a “mere reference standard” within certain time windows for regulating communications.

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IV. DONOR DISCLOSURE FOR INDEPENDENT EXPENDITURES MADE BY ENTITIES THAT ARE NOT PACS

(a) Donor Disclosure. It appears that disclosure of donors of earmarked donations is required in certain circumstances, but it is not entirely clear what those circumstances are.

Donor disclosure does not appear to be required on IE reports that are filed by “corporations, cooperative corporations, limited liability companies, and associations.” *See id.* § 16.1-08.1-03.12(1). For the purposes of the campaign finance statute, “‘corporations’ includes nonprofit corporations. However, if a political committee, *the only purpose of which* is accepting contributions and making expenditures for a political purpose, incorporates for liability purposes only, the committee is not considered a corporation for the purposes of this chapter.” *Id.* § 16.1-08.1-01(6) (emphasis added).

For any other “committee, club, association, or other group of persons” that sponsors an IE, “but for which making contributions and expenditures for political purposes is not its primary purpose,” must report as an “incidental committee.” *See id.* §§ 16.1-08.1-01(8) and 16.1-08.1-03.12.

Additionally, it is possible that organizations making “expenditures for the purpose of aiding or opposing a [ballot] measure” are required to file separate reports, but the law is unclear about whether such reports only apply to political parties and PACs. *See id.* §§ 16-08.1-03.1(1), 16-08.1-02.4, 16-08.1-01(13)(e). If reports are required for non-PAC entities, the identification of “out-of-state contributors” whose contributions are “for the express purpose of furthering the passage or defeat of a ballot measure” is required. *Id.* § 16-08.1-03.1(2).

(b) Threshold for Donor Disclosure. For incidental committees, if disclosure of donors of earmarked contributions is required, donors who give more than a total of \$200 to the “incidental committee” during the reporting period are required to be disclosed. *Id.* § 16.1-08.1-03.12(2)(b).

If reporting is required for non-PAC entities for ballot measure-related expenditures, donors are required to be identified if they have given more than \$100 to the entity. *Id.* § 16-08.1-03.1(2)(a). It is unclear over what time period this threshold applies.

V. DISCLAIMER REQUIREMENTS FOR INDEPENDENT EXPENDITURES AND ELECTIONEERING COMMUNICATIONS

(a) Form of Disclaimer. The North Dakota statute only specifies content that must be included in required disclaimers and does not specify whether such disclaimers must be written or spoken (as/where applicable). *See id.* § 16.1-10-04.1.

(b) Content of Disclaimer. The statute provides that “[e]very political advertisement by newspaper, pamphlet or folder, display card, sign, poster, or billboard, website, or by any other similar public means . . . must disclose on the advertisement the name of the person

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. . .” as well as “the name [including first and last name] of the chairman or other responsible individual from the political party, association, or partnership.” *Id.*

(c) Types of Media Covered. The disclaimer requirements apply to communications by “newspaper, pamphlet or folder, display card, sign, poster, or billboard, website, or by any other similar public means,” as well as to “radio or television broadcast.” *Id.*

(d) Exceptions. The only specific exception to the disclaimer requirement is “campaign buttons.” *Id.*

VI. STATUTORY OR REGULATORY AUTHORITY FOR SUPER PACS

The North Dakota statute does not appear to provide for super PACs.

VII. MAJOR/PRIMARY PURPOSE FOR PAC STATUS

It is not entirely clear whether North Dakota has a “primary purpose” standard for PACs, but, in any event, the state also regulates certain non-primary purpose entities as “incidental committees.”

A “political committee” is defined, in relevant part, as “any committee, club, association, or other group of persons which receives contributions or makes expenditures for political purposes,” and also specifically includes “incidental committees” for which, as discussed above in Section IV, “making contributions and expenditures for political purposes is not [their] primary purpose.” *See id.* § 16.1-08.1-01(12) and (8).

VIII. PAC STATUS DETERMINATION AND THRESHOLDS

(a) PAC Definition. A “political committee” is an entity “which receives contributions or makes expenditures for political purposes.” *Id.* § 16.1-08.1-01(12).

(As discussed above in Section II, the definition of an “expenditure” is rather vague and broad.)

(b) Threshold for PAC Registration/Reporting. It does not appear that there is any threshold for registering and reporting as a PAC. *See id.* §§ 16.1-08.1-03.2 and -03.12.

Since there is no threshold, there is nothing that is adjusted for inflation. *See id.*

(c) Threshold for Disclosure of PAC Donors. All donors who contributed more than a total of \$200 during the reporting period generally must be disclosed. *Id.* §§ 16.1-08.1-02.3, -02.4. However, the donor disclosure threshold for ballot measure committees is any donor who has contributed more than a total of \$100 during the reporting period. *Id.* § 16.1-08.1-03.1.

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(d) Disclosure of Donors' Employer Information on PAC Reports. Employer information generally is required for contributors who have given a total of \$5,000 or more during the reporting period. *Id.* §§ 16.1-08.1-02.3.4, -02.4.4.

If a ballot measure committee reports any contributions from out-of-state contributors, the employer information must be reported for any “subcontributor” who has given more than \$100 “of the total contribution” from the out-of-state contributor if the “subcontributor . . . has stated a contribution is for the express purpose of furthering the passage or defeat of a ballot measure.” *Id.* § 16.1-08.1-03.1.2.

IX. REGULATION OF “INCIDENTAL COMMITTEES”

North Dakota no longer regulates “incidental committees.” North Dakota abolished its “incidental committee” law in 2017. *See* N.D. 2017 Sess. Laws Ch. 155 § 1.

X. PRIVATE ENFORCEMENT ACTIONS

Private enforcement actions do not appear to be permitted. *See id.* §§ 16.1-08.1-05 and -06.1.

XI. COORDINATION

(a) “Content Prong.” Coordination appears to cover only “expenditure[s] made for a political purpose or for the purpose of influencing the passage or defeat of a measure.” *See id.* § 16.1-08.1-01(9). As discussed above in Section II, the definitions of “expenditure” and “political purpose” are very vague and broad. *Id.* § 16.1-08.1-01(7) and (14).

(b) Former Employee/Vendor “Conduct Prong.” The coordination concept does not appear to specifically cover the use of former employees or vendors. *See id.* § 16.1-08.1-01(9).

(c) Public Information Exemption. The coordination concept does not appear to specifically provide for a public information exemption. *See id.*

XII. LOBBYING

(a) General Lobbyist/Lobbyist Principal Donor Disclosure. Donor disclosure does not appear to be required on lobbying registrations or reports. *See id.* § 54-05.1-03.

(b) Grassroots Lobbying. The definition of a lobbyist is broad enough that it could include grassroots lobbying.

While North Dakota does not define the term “lobbying,” a “lobbyist is defined as:

any person who, in any manner whatsoever, directly or *indirectly*, performs any of the following activities:

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- a. Attempts to secure the passage, amendment, or defeat of any legislation by the legislative assembly or the approval or veto of any legislation by the governor of the state.
- b. Attempts to influence decisions made by the legislative management or by an interim committee of the legislative management.

Id. § 54-05.1-02(1) (emphasis added).

(The North Dakota Secretary of State's office nonetheless has advised IFS informally that grassroots lobbying activity sponsored by an organization would likely not require registration by that organization because private citizens would be the ones contacting government officials.)

(c) Forms of Grassroots Lobbying Communications Regulated. If grassroots lobbying is regulated, there are no particular forms of communications that are specifically regulated. *See id.*

(d) Grassroots Lobbying Reference to Specific Legislation. If grassroots lobbying is regulated, it does not appear to reference to specific legislation is required for a lobbying communication to be regulated. *See id.*

(e) Grassroots Lobbying Registration and Reporting Thresholds. If grassroots lobbying is regulated, it does not appear that there is any threshold for registering and reporting as a lobbyist. *See* 54-05.1-03(1).

(f) Donor Disclosure for Grassroots Lobbying. If grassroots lobbying is regulated, donor disclosure does not appear to be required on lobbying reports. *See id.* § 54-05.1-03(2).

(g) Earmarked Donor Disclosure for Grassroots Lobbying. N/A

(h) Donor Disclosure Threshold for Grassroots Lobbying (If Not Limited to Earmarked Donors). N/A

(i) Threshold Indexing (If Grassroots Lobbying Is Regulated). There are no registration and reporting thresholds.

OHIO

I. FALSE POLITICAL SPEECH LAW

It is prohibited for anyone to:

(9) Make a false statement concerning the voting record of a candidate or public official;

(10) Post, publish, circulate, distribute, or otherwise disseminate a false statement concerning a candidate, either knowing the same to be false or with reckless disregard of whether it was false or not, if the statement is designed to promote the election, nomination, or defeat of the candidate.

Ohio Rev. Code § 3517.21(B)(9) and (10).

(This statute has been held unconstitutional. *See Susan B. Anthony List v. Driehaus*, 814 F.3d 466 (6th Cir. 2016).)

II. DEFINITION OF EXPENDITURE/EXPRESS ADVOCACY

An “expenditure” is defined as “the disbursement or use of a contribution *for the purpose of influencing the results of an election . . .*” Ohio Rev. Code § 3517.01(C)(6) (emphasis added); *see also id.* § 3517.01(C)(17) (defining “independent expenditure”).

In addition:

During the thirty days preceding a primary or general election, any disbursement to pay the direct costs of producing or airing a broadcast, cable, or satellite communication that refers to a clearly identified candidate shall be considered to be made for the purpose of influencing the results of that election and shall be reported as an expenditure or as an independent expenditure . . .

Id. § 3517.01(C)(6).

III. ELECTIONEERING COMMUNICATIONS

(a) Regulation of ECs. Ohio regulates “electioneering communications.” *See id.* § 3517.1011(A)(7)(a).

(b) What Content Triggers Regulation as an Electioneering Communication. A communication is regulated as an EC if it: “refers to a clearly identified candidate,” *id.*, which in turn is defined as when “the candidate’s name, nickname, photograph, or drawing appears, or the identity of the candidate is otherwise apparent through an unambiguous reference to the person such as ‘the chief justice’ [or] ‘the governor’ . . . or through an unambiguous reference to the person’s status as a candidate,” *id.* § 3517.1011(A)(13).

(c) Types of Media Covered. Electioneering communications cover “any broadcast, cable, or satellite communication.” *Id.* § 3517.1011(A)(7)(a).

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(d) Reporting Threshold. The threshold for reporting is making ECs totaling more than \$10,000 during the calendar year. *Id.* § 3517.1011(D).

(This threshold does not appear to be indexed for inflation. In addition, prior to making any ECs – apparently of any amount – a form (Form 31-EC) must be filed with the Secretary of State providing notice of sponsor’s intent to make ECs.)

(e) Time Windows. Ohio law defines the term “electioneering communication” to encompass communications made within a broader time window than the federal 30/60-day pre-election windows.

Specifically, the law regulates as ECs communications made during either of the following periods of time:

- If the person becomes a candidate before the day of the primary election at which candidates will be nominated for election to that office, between the date that the person becomes a candidate and the thirtieth day prior to that primary election, and between the date of the primary election and the thirtieth day prior to the general election at which a candidate will be elected to that office; or
- If the person becomes a candidate after the day of the primary election at which candidates were nominated for election to that office, between the date of the primary election and the thirtieth day prior to the general election at which a candidate will be elected to that office.

Id. § 3517.1011(A)(7)(a).

(f) Jurisdictional Limitation. There does not appear to be any jurisdictional limitation to the definition of an EC. *See id.*

(g) Donor Disclosure. EC reports are required to disclose all donors who gave a total of more than \$200 during the reporting period “whose contributions were used for making the” EC. *Id.* § 3517.1011(D)(1)(f). Thus, donor disclosure does not appear to be limited to earmarked donations.

In addition, donor disclosure may be limited to the donors to a “segregated bank account . . . for electioneering communications” if the segregated account is used to fund the reported EC. *Id.* § 3517.1011(D)(1)(e). The threshold for donor disclosure is the same for the segregated account. *Id.*

(h) 501(c)(3) Exemption. There is no specific 501(c)(3) exemption in the electioneering communications law. *See id.* § 3517.1011.

(i) Media Exemption. A media exemption applies for:

A communication that appears in a news story, commentary, public service announcement, bona fide news programming, or editorial distributed through the facilities of any broadcast, cable, or satellite television or radio station,

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unless those facilities are owned or controlled by any political party, political committee, or candidate.

Id. § 3517.1011(A)(7)(b)(ii).

(j) Other Exemptions. Other exemptions apply for:

(i) A communication that is publicly disseminated through a means of communication other than a broadcast, cable, or satellite television or radio station. For example, “electioneering communication” does not include communications appearing in print media, including a newspaper or magazine, handbill, brochure, bumper sticker, yard sign, poster, billboard, and other written materials, including mailings; communications over the internet, including electronic mail; or telephone communications...

(iv) A communication that constitutes a candidate debate or forum or that solely promotes a candidate debate or forum and is made by or on behalf of the person sponsoring the debate or forum.

Id. § 3517.1011(A)(7)(b).

IV. **DONOR DISCLOSURE FOR INDEPENDENT EXPENDITURES MADE BY ENTITIES THAT ARE NOT PACS**

There does not appear to be any general reporting requirement for IEs.

(This is confirmed by Ohio Elections Comm’n Adv. Op. No. 2010ELC-02, but which encouraged voluntary reporting of IEs on Form 30-E. Express advocacy communications that meet the definition of an EC likely are subject to the EC reporting requirements.)

V. **DISCLAIMER REQUIREMENTS FOR INDEPENDENT EXPENDITURES AND ELECTIONEERING COMMUNICATIONS**

(a) Form of Disclaimer. The Ohio statute only specifies content that must be included in required disclaimers and does not specify whether such disclaimers must be written or spoken (as/where applicable). *See* Ohio Rev. Stat. §§ 3517.1011(F) and .20(B)(1).

(b) Content of Disclaimer. The name of the sponsor must “appear[] in a conspicuous place on or is contained or included within the publication, communication, or telephone call” for the following types of communications:

(a) . . . a form of political publication in support of or opposition to a candidate or a ballot issue or question;

(b) . . . an expenditure for the purpose of financing political communications in support of or opposition to a candidate or a ballot issue or question through public political advertising;

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(c) [communications made] over the broadcasting facilities of any radio or television station within this state, any communication in support of or opposition to a candidate or a ballot issue or question or any communication that is designed to influence the voters in an election;

(d) . . . a telephone bank for the purpose of supporting or opposing a candidate or a ballot issue or question or for the purpose of influencing the voters in an election.

Id. § 3517.20(B)(1).

In addition to this general disclaimer requirement, an EC must indicate that it “is not authorized by the candidate or the candidate’s campaign committee.” *Id.* § 3517.1011(F)(1).

(c) Types of Media Covered. The disclaimer requirements apply to:

- any “notice, placard, advertisement, sample ballot, brochure, flyer, direct mailer, or other form of general publication”;
- “newspapers, magazines, outdoor advertising facilities, direct mailings, or other similar types of general public political advertising, or flyers, handbills, or other nonperiodical printed matter”;
- a “telephone bank” of more than five hundred telephone calls of an identical or substantially similar nature within any thirty-day period, whether those telephone calls are made by individual callers or by recording.
- any “broadcast, cable, or satellite communication” (for ECs).

Id. and *id.* § 3517.20(A) and 3517.1011(A)(7)(a).

(d) Exceptions. “[P]rinted matter and certain other kinds of printed communications such as campaign buttons, balloons, pencils, or similar items, the size or nature of which makes it unreasonable to add an identification or disclaimer” are exempt from the general disclaimer requirement. *Id.* § 3517.20(E).

VI. STATUTORY OR REGULATORY AUTHORITY FOR SUPER PACS

The Ohio statute does not appear to provide for super PACs.

VII. MAJOR/PRIMARY PURPOSE FOR PAC STATUS

Ohio defines a “political action committee” as “a combination of two or more persons, *the primary or major purpose* of which is to support or oppose any candidate, political party, or issue, or to influence the result of any election *through express advocacy*, and that is not a political party, a campaign committee, a political contributing entity, or a legislative campaign fund.” *Id.* § 3517.01(C)(8) (emphasis added).

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VIII. PAC STATUS DETERMINATION AND THRESHOLDS

(a) PAC Definition. A “political action committee” is “a combination of two or more persons, the primary or major purpose of which is to *support or oppose* any candidate, political party, or issue, *or* to influence the result of any election *through express advocacy*.” *Id.* (emphasis added).

“Express advocacy” is defined as “a communication that contains express words advocating the nomination, election, or defeat of a candidate or that contains express words advocating the adoption or defeat of a question or issue, as determined by a final judgment of a court of competent jurisdiction.” *Id.* § 3517.01(23).

(In addition, IFS is aware that in *Corsi v. Election Comm’n*, 981 N.E.2d 919 (Ohio App.2012), the court upheld the PAC disclosure requirements even though the organization “raises and spends [only] a small amount of money on political activities.” *Id.* at 927. While the amount of money spent can be “a factor,” the “determination of an organization’s ‘primary or major purpose’ is a fact intensive analysis and such a determination must weigh a number of considerations,” including things like its mission statement and whether it disseminated a “voter guide that . . . supported and recommended certain officials.” *Id.*)

(b) Threshold for PAC Registration/Reporting. It does not appear that there is any threshold for registering and reporting as a PAC. *See id.* § 3517.10.

Since there is no threshold, there is nothing that is adjusted for inflation. *See id.*

(c) Threshold for Disclosure of PAC Donors. There is no general threshold below which donor disclosure is not required, but donors who give \$25 or less “at one social or fund-raising activity” are not required to be disclosed. *Id.* § 3517.10(B)(4)(e).

(d) Disclosure of Donors’ Employer Information on PAC Reports. Employer information is required for contributors who give “a contribution . . . that exceeds [\$100].” *Id.* § 3517.10(B)(4)(b)(ii) and (E)(2).

IX. REGULATION OF “INCIDENTAL COMMITTEES”

Ohio does not appear to regulate “incidental committees.”

X. PRIVATE ENFORCEMENT ACTIONS

Private enforcement actions do not appear to be permitted. *See id.* §§ 3517.153-.155 and .157.

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XI. COORDINATION

(a) **“Content Prong.”** Coordination covers “expenditures,” which, as discussed above in Section II, is quite vague and broad. *See id.* § 3517.01(17) and (6).

In addition, coordination covers “electioneering communications.” *Id.* § 3517.1011(A)(5).

(b) **Former Employee/Vendor “Conduct Prong.”** The coordination concept covers the use of former employees or vendors and is not limited to any specific time window in terms of when those former employees or vendors worked for candidates. *See id.* §§ 3517.01(d)(ii) and 3517.1011(A)(5)(a).

(c) **Public Information Exemption.** The coordination concept does not appear to specifically provide for a public information exemption. *See id.*

XII. LOBBYING

(a) **General Lobbyist/Lobbyist Principal Donor Disclosure.** Donor disclosure does not appear to be required on lobbying registrations or reports. *See id.* §§ 101.72, .73, and .74 and 121.62, .63, and .64.

(b) **Grassroots Lobbying.** Grassroots lobbying does not appear to be regulated in Ohio.

The legislative lobbying law defines a legislative lobbyist in terms of whether a person “actively advocates,” which in turn is defined to mean “to promote, advocate, or oppose the passage, modification, defeat, or executive approval or veto of any legislation *by direct communication* with any member of the general assembly, any member of the controlling board, the governor,” certain department directors, and the policy, administration, and supervisory staff of these officials. *Id.* § 101.70(E) (emphasis added).

The executive lobbying law defines “executive agency lobbying activity” as “contacts made to promote, oppose, or otherwise influence the outcome of an executive agency decision *by direct communication* with” a “reportable person in the Executive Branch.” *Id.* § 121.60(I) (emphasis added).

(c) **Forms of Grassroots Lobbying Communications Regulated.** N/A

(d) **Grassroots Lobbying Reference to Specific Legislation.** N/A

(e) **Grassroots Lobbying Registration and Reporting Thresholds.** N/A

(f) **Donor Disclosure for Grassroots Lobbying.** N/A

(g) **Earmarked Donor Disclosure for Grassroots Lobbying.** N/A

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(h) Donor Disclosure Threshold for Grassroots Lobbying (If Not Limited to Earmarked Donors). N/A

(i) Threshold Indexing (If Grassroots Lobbying Is Regulated). N/A

OKLAHOMA

I. FALSE POLITICAL SPEECH LAW

Oklahoma does not appear to have a false political speech law.

II. DEFINITION OF EXPENDITURE/EXPRESS ADVOCACY

While Oklahoma's "expenditure" definition uses the term of art "expressly advocate," this term is not defined, and it is unclear what is meant by it.

An "expenditure" is defined as "a purchase, payment, distribution, loan, advance, compensation, reimbursement, fee deposit . . . which is used *to expressly advocate the election or defeat* of a clearly identified candidate or candidates or the passage or defeat of a ballot measure or ballot measures." 74 Okla. Stat. Ch. 62 Appx., § 257:1-1-2 (emphasis added); *see also id.* (defining "independent expenditure").

The term "expressly advocate" does not appear to be further defined.

(IFS is aware that, in the past, the Oklahoma Ethics Commission has interpreted "expressly advocate" broadly to include both *MCFL* and *Furgatch* express advocacy and has also stated that "explicit words" and "express terms" are not needed for a communication to "expressly advocate." *See* Okla. Ethics Comm'n, Ethics Interp. EI-99-008. Subsequently, a U.S. district court held that this standard should encompass only *Buckley* express advocacy. *See Oklahomans for Life, Inc. v. Luton*, No. CIV-00-1163-C (W.D. Okla. May 25, 2001).)

III. ELECTIONEERING COMMUNICATIONS

(a) Regulation of ECs. Oklahoma regulates "electioneering communications." *See* 74 Okla. Stat. Ch. 62 Appx., § 257:1-1-2.

(b) What Content Triggers Regulation as an Electioneering Communication. A communication is regulated as an EC if it "refers to a clearly identified candidate for state office" and "does not explicitly advocate the election or defeat of any candidate" or that "refer[s] to one ballot measure or one or more of the same ballot measures." Okla. Ethics Comm'n R. 2.2(7) and 74 Okla. Stat. Ch. 62 Appx., § 257:1-1-2.

(c) Types of Media Covered. Electioneering communications cover communications "sent by Internet advertising, direct mail, broadcast by radio, television, cable or satellite, or appears in a newspaper or magazine" or by "handbill" or "billboard." *Id.*

(d) Reporting Threshold. The threshold for reporting is making ECs totaling \$5,000 or more – apparently over any time period that is regulated under the EC law. 74 Okla. Stat. Ch. 62 Appx., § 257:10-1-16(b)(2) and (3); Okla. Ethics Comm'n R. 2.108(A) and (B).

(This threshold does not appear to be indexed for inflation.)

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(e) Time Windows. An “electioneering communication” is regulated if it is made within:

- (i) 60 days before a general or special election for the office sought by the candidate or candidates or the ballot measure or ballot measures; or
- (ii) 30 days before a primary or runoff primary election for the office sought by the candidate or candidates

74 Okla. Stat. Ch. 62 Appx., § 257:1-1-2; Okla. Ethics Comm’n R. 2.2(7).

(f) Jurisdictional Limitation. An “electioneering communication” is regulated:

if the communication or series of communications have been or can be received by –

- (A) 2,500 or more persons in the district the candidate seeks to represent in the case of a candidate for the Oklahoma State House of Representatives;
- (B) 5,000 or more in the district the candidate seeks to represent in the case of a candidate for district attorney, district judge, associate district judge, or the Oklahoma State Senate; or
- (C) 25,000 or more persons in the State of Oklahoma in the case of a candidate for a statewide elective office or ballot measure.

Id.

(g) Donor Disclosure. Donor disclosure is generally limited to earmarked donors, but if a 501(c) entity has not received an IRS determination letter, general donor disclosure is required.

If the sponsor of an EC has “received funds from any other person *for the purpose of* making an electioneering communication or communications,” the sources of those funds are required to be disclosed. Okla. Ethics Comm’n R. 2.108(E) (emphasis added). “[F]or the purpose of” means that the funds are either: (1) received by an organization or corporation in response to a solicitation specifically requesting funds to pay for an electioneering communication or independent expenditure or (2) specifically designated for electioneering communications or independent expenditures by the donor.” *Id.*

However, if the sponsor of an EC is a 501(c) entity that has not received a determination letter from the IRS, “the report shall include the name, address and principal business activity of each person contributing funds in excess of Fifty Dollars (\$50.00) in the aggregate to the corporation during the current calendar year and the preceding calendar year.” *Id.* R. 2.108(F).

For 501(c) entities subject to the general donor disclosure requirement, there does not appear to be any allowance under which donors may avoid disclosure if they prohibit their

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donations from being used to fund ECs, or whereby disclosure may be limited to donors to a segregated account that is used to fund ECs.

(h) 501(c)(3) Exemption. There is no specific 501(c)(3) exemption in the electioneering communications law. *See id.*

(i) Media Exemption. A media exemption applies for:

a communication or series of communications appearing in a news story, commentary, or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, or other periodical publication, unless such facilities are owned or controlled by any political party, political action committee, candidate, candidate committee or ballot measure committee.

74 Okla. Stat. Ch. 62 Appx., § 257:1-1-2.

(j) Other Exemptions. Other exemptions apply for:

a communication or series of communications which constitute a candidate debate or forum or which solely promotes such a debate or forum and is made by or on behalf of the person sponsoring the debate or forum.

Id.

IV. **DONOR DISCLOSURE FOR INDEPENDENT EXPENDITURES MADE BY ENTITIES THAT ARE NOT PACS**

(a) Donor Disclosure. Donor disclosure is generally limited to earmarked donors, but if a 501(c) entity has not received an IRS determination letter, general donor disclosure is required.

If the sponsor of an IE has “received funds from any other person *for the purpose of* making an independent expenditure or expenditures,” the sources of those funds are required to be disclosed. Okla. Ethics Comm’n R. 2.107(E). “[F]or the purpose of” means that the funds are either: (1) received by an organization or corporation in response to a solicitation specifically requesting funds to pay for an independent expenditure or electioneering communication or (2) specifically designated for independent expenditures or electioneering communications by the donor.” *Id.*

However, if the sponsor of an IE is a 501(c) entity that has not received a determination letter from the IRS, “the report shall include the name, address and principal business activity of each person contributing funds in excess of Fifty Dollars (\$50.00) in the aggregate to the corporation during the current calendar year and the preceding calendar year.” *Id.* R. 2.107(F).

(b) Threshold for Donor Disclosure. For both earmarked and unearmarked donations (where applicable), a donor is required to be disclosed if the donor has given a total of more

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than \$50 to the sponsor of the IE. *Id.* R. 2.107(E) and (F). This threshold appears to be determined on the basis of amounts given to the sponsor during the period covered by the applicable reporting period. *See id.*

For 501(c) entities subject to the general donor disclosure requirement, there does not appear to be any allowance under which donors may avoid disclosure if they prohibit their donations from being used to fund IEs, or whereby disclosure may be limited to donors to a segregated account that is used to fund IEs. *See id.*

V. DISCLAIMER REQUIREMENTS FOR INDEPENDENT EXPENDITURES AND ELECTIONEERING COMMUNICATIONS

(a) Form of Disclaimer. IE and EC disclaimers generally must be written, but for radio ads, the disclaimer must be spoken. 74 Okla. Stat. Ch. 62 Appx., § 257:10-1-7(b)(2) and (3). However, the regulations appear to suggest that video ads may use either an audio or a visual disclaimer. *See* Okla. Ethics Comm’n R. 2.57.

(b) Content of Disclaimer. The disclaimer must state: “Not authorized by any candidate or candidate committee [or “political party” if the ad specifically concerns “candidates of a political party,” or “ballot measure committee” if the ad concerns a ballot measure]. Authorized and paid for by” to be followed by the name of the person who paid for the communication, the person’s permanent street address and telephone number.” *Id.* R. 2.57 and 2.58; 74 Okla. Stat. Ch. 62 Appx., § 257:10-1-7(b)(1).

(c) Types of Media Covered. The disclaimer requirements apply to:

- Any of the forms of communications regulated as ECs (*see* Section III(c) above);
- All “written communication[s],” including any “billboard or poster”;
- All “broadcast communication[s]”;
- Any “Internet advertising, or video . . . cable or satellite broadcast”;
- Any “direct mail, magazine advertisement, [or] newspaper advertisement.”

74 Okla. Stat. Ch. 62 Appx., § 257:10-1-7(b)(2) and (3); Okla. Ethics Comm’n R. 2.57 and 2.58.

(d) Exceptions. The disclaimer requirements do not apply to “bumper stickers, pins, buttons, pens and similar small items upon which the disclaimer cannot be conveniently printed nor to skywriting, water towers or other means of displaying an advertisement of such a nature that the inclusion of a disclaimer would be impracticable.” 74 Okla. Stat. Ch. 62 Appx., § 257:10-1-7(b)(4).

In addition, t-shirts are also exempt. Okla. Ethics Comm’n R. 2.58.

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VI. STATUTORY OR REGULATORY AUTHORITY FOR SUPER PACS

Oklahoma's regulations recognize super PACs in the form of "unlimited committees," which are permitted to accept unlimited contributions from corporations and other sources "exclusively" for sponsoring independent expenditures and electioneering communications. Okla. Ethics Comm'n R. 2.35.

VII. MAJOR/PRIMARY PURPOSE FOR PAC STATUS

PAC status is based on an analysis of "the primary purpose" of an entity. 74 Okla. Stat. Ch. 62 Appx., § 257:1-1-2.

VIII. PAC STATUS DETERMINATION AND THRESHOLDS

(a) PAC Definition. A "political action committee" is defined as:

a combination of at least two individuals, or a person other than an individual:

(A) with *the primary purpose* of:

(i) expressly supporting or opposing a clearly identified candidate or candidates, or a party committee, except those required to file with the Federal Election Commission, or

(ii) supporting or opposing a ballot measure; *and*

(B) which *accepts or gives contributions or makes expenditures* from a joint account aggregating at least five hundred dollars (\$500) during a calendar year.

Id. (emphasis added).

Notwithstanding the broader "supporting or opposing" language in (A), it appears that an entity's status as a PAC is based on the more specific language in (B) – *i.e.*, whether it "accepts or gives contributions or makes expenditures."

(As discussed above in Section II, however, the definition of an "expenditure" is still imprecise.)

(b) Threshold for PAC Registration/Reporting. The threshold for registering and reporting as a PAC is accepting or making contributions or making expenditures totaling \$500 or more per calendar year. *Id.*

This threshold does not appear to be adjusted for inflation. *See id.*

(c) Threshold for Disclosure of PAC Donors. Donors who give a total of more than \$50 during the reporting period are required to be disclosed. *Id.* § 257:10-1-14(a)(3)(D).

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(d) Disclosure of Donors' Employer Information on PAC Reports. A donor's "principal business activity" may be listed on reports in lieu of the donor's employer and occupation. *Id.*

IX. REGULATION OF "INCIDENTAL COMMITTEES"

Oklahoma does not appear to regulate "incidental committees."

X. PRIVATE ENFORCEMENT ACTIONS

Private enforcement actions do not appear to be permitted. *See* Okla. Ethics Comm'n R. 6.

XI. COORDINATION

(a) "Content Prong." Coordination covers "expenditures," which, as discussed above in Section II, is quite vague and broad. 74 Okla. Stat. Ch. 62 Appx., § 257:1-1-2 (defining "independent expenditure" and "expenditure").

In addition, coordination covers "electioneering communications." *Id.* (defining "contribution").

(b) Former Employee/Vendor "Conduct Prong." The coordination concept does not appear to address the use of former employees or vendors.

(c) Public Information Exemption. The coordination concept does not appear to specifically provide for a public information exemption. *See id.*

XII. LOBBYING

(a) General Lobbyist/Lobbyist Principal Donor Disclosure. Donor disclosure does not appear to be required on lobbying registrations or reports. *See* Okla. Ethics Comm'n R. 5.3, 5.5, 5.21, and 5.22.

(b) Grassroots Lobbying. Grassroots lobbying does not appear to be regulated in Oklahoma.

Legislative lobbying is defined as "any oral or written communication with the Governor or with a member of the Legislature or with an employee of the Governor or the Legislature on behalf of a lobbyist principal with regard to the passage, defeat, formulation, modification, interpretation, amendment, adoption, approval or veto of any legislation, rule, regulation, executive order or any other program, policy or position of state government." Okla. Ethics Comm'n R. 5.2(7).

Executive lobbying is defined as "any oral or written communication with a state officer or employee of an agency, excluding the Governor or a member of the Legislature or with an employee of the Governor or the Legislature, on behalf of a lobbyist principal with

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regard to the passage, defeat, formulation, modification, interpretation, amendment, adoption, approval or veto of any legislation, rule, rate, regulation, executive order or any other program, policy or position of state government.” *Id.* R. 5.2(3).

In addition, “a speech, article, publication or other material that is widely distributed, published in newspapers, magazines or similar publications or broadcast on radio or television” does not constitute lobbying. *Id.* R. 5.2(3) and (7).

(c) Forms of Grassroots Lobbying Communications Regulated. N/A

(d) Grassroots Lobbying Reference to Specific Legislation. N/A

(e) Grassroots Lobbying Registration and Reporting Thresholds. N/A

(f) Donor Disclosure for Grassroots Lobbying. N/A

(g) Earmarked Donor Disclosure for Grassroots Lobbying. N/A

(h) Donor Disclosure Threshold for Grassroots Lobbying (If Not Limited to Earmarked Donors). N/A

(i) Threshold Indexing (If Grassroots Lobbying Is Regulated). N/A

OREGON

I. FALSE POLITICAL SPEECH LAW

Oregon law provides that:

No person shall cause to be written, printed, published, posted, communicated or circulated, any letter, circular, bill, placard, poster, photograph or other publication, or cause any advertisement to be placed in a publication, or singly or with others pay for any advertisement, with knowledge or with reckless disregard that the letter, circular, bill, placard, poster, photograph, publication or advertisement contains a false statement of material fact relating to any candidate, political committee or measure.

Ore. Rev. Stat. § 260.532(1).

II. DEFINITION OF EXPENDITURE/EXPRESS ADVOCACY

Oregon defines an “expenditure” in terms of whether it is in “support of or opposition to” a candidate. Although that concept is defined, its definition appears to be broader than a *Furgatch*/100.22(b) standard. In addition, Oregon regulates as “expenditures” communications that refer to candidates or political parties within pre-election time windows

An “expenditure” is defined as:

the payment or furnishing of money or anything of value or the incurring or repayment of indebtedness or obligation by or on behalf of a candidate, political committee or person in consideration for any services, supplies, equipment or other thing of value performed or furnished for any reason, including *support of or opposition to* a candidate, political committee or measure, or for reducing the debt of a candidate for nomination or election to public office.

Ore. Rev. Stat. § 260.005(8); *see also id.* § 260.005(10) (defining “independent expenditure”).

The phrase “in support of or in opposition to” is defined as follows:

(A) The communication, taken in its context, clearly and unambiguously urges the election or defeat of a clearly identified candidate for nomination or election to public office, or the passage or defeat of a clearly identified measure;

(B) The communication, as a whole, seeks action rather than simply conveying information; and

(C) It is clear what action the communication advocates.

Id. § 260.005(10)(c).

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(IFS is aware that this definition appears to be a statutory codification of an Oregon state Court of Appeals decision that articulated what it means for an expenditure to be “in support of or in opposition to.” *See Crumpton v. Keisling*, 160 Ore. App. 406, 420 (1999). According to the Oregon state court, this standard is based on the U.S. Court of Appeals for the Ninth Circuit’s Furgatch standard and is broader than the U.S. Supreme Court’s *Buckley* “magic words” of express advocacy standard. *Id.* at 418.

As the Secretary of State’s campaign finance manual explains, “expressing clear words of advocacy, such as ‘vote for’ or ‘defeat’ . . . are not required to make the expense for the communication a reportable expenditure.” Ore. Sec’y of State, 2016 Campaign Finance Manual at 8, available at <http://sos.oregon.gov/elections/Documents/campaign-finance.pdf>.)

In addition, communications involving total expenditures of \$750 or more are regulated as independent expenditures (assuming they are not coordinated with candidates) if: (1) they refer to a clearly identified candidate or to a political party; and (2) “[t]he communication is published and disseminated to the relevant electorate within 30 calendar days before a primary election or 60 calendar days before a general election.” Ore. Rev. Stat. § 260.005(10)(c)(B).

III. ELECTIONEERING COMMUNICATIONS

(a) Regulation of ECs. As discussed above in Section II, Oregon regulates electioneering communications under its “independent expenditure” definition. *See id.*

(b) What Content Triggers Regulation as an Electioneering Communication. A communication is regulated if it: (1) refers to a clearly identified candidate or to a political party; and (2) “[t]he communication is published and disseminated to the relevant electorate within 30 calendar days before a primary election or 60 calendar days before a general election.” *See id.*

(c) Types of Media Covered. The Oregon law is not specific as to which types of media are covered. *See id.*

(d) Reporting Threshold. The threshold for reporting is sponsoring regulated communications totaling more than \$750. *See id.*; *see also id.* §§ 260.083(1)(b); 260.044(1).

(This threshold does not appear to be indexed for inflation.)

(e) Time Windows. Oregon regulates communications that refer to candidates or political parties within 30 days before a primary or 60 days before a general election. *Id.* § 260.005(10)(c)(B).

(f) Jurisdictional Limitation. A communication is regulated if it “is published and disseminated to the relevant electorate.” *Id.*

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(g) **Donor Disclosure.** No reporting of donors is required. *See id.* §§ 260.083(b); 260.044.

(h) **501(c)(3) Exemption.** Nonpartisan voter participation activities and certain nonpartisan voters' guides by a 501(c)(3) entity are exempt from regulation. *Id.* § 260.007(6), (11)(a)(A).

(i) **Media Exemption.** A media exemption applies for "[a]ny written news story, commentary or editorial distributed through the facilities of any broadcasting station, newspaper, magazine or other regularly published publication, unless a political committee owns the facility." *Id.* § 260.007(1).

(j) **Other Exemptions.** Other relevant exemptions include:

- Non-partisan voter participation activities;
- Internal communications to a membership organization's members or to a corporation's members, shareholders, or employees;
- Certain slate cards and sample ballots printed by political party committees;
- Candidate debates and forums and publicity for such events;
- Certain non-partisan voter guides;
- Certain commercial communications that depict a candidate in his or her capacity as an owner, operator, or employee of a business that existed prior to the candidate's candidacy.

Id. § 260.007(6), (7), (9)-(11).

IV. DONOR DISCLOSURE FOR INDEPENDENT EXPENDITURES MADE BY ENTITIES THAT ARE NOT PACS

Donor disclosure does not appear to be required on IE reports. *See Ore. Rev. Stat.* § 260.083(1)(b).

(*See also Ore. Sec'y of State, 2016 Campaign Finance Manual at 53.*)

V. DISCLAIMER REQUIREMENTS FOR INDEPENDENT EXPENDITURES AND ELECTIONEERING COMMUNICATIONS

Oregon does not appear to have any campaign finance disclaimer requirements. (*See Ore. Atty. Gen. Op. No. 8266 (Mar. 10, 1999) (concluding that a state statute that "prohibits most anonymous signs, publications and broadcasts used in political campaigns, violate[s] the free speech provisions of the Oregon Constitution or the United States Constitution").*)

VI. STATUTORY OR REGULATORY AUTHORITY FOR SUPER PACS

Although Oregon's statutes and regulations do not explicitly provide for super PACs, Oregon does not otherwise have any contribution amount limitations or source prohibitions.

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VII. MAJOR/PRIMARY PURPOSE FOR PAC STATUS

Oregon's PAC definition does not appear to have any major or primary purpose limitation. *See* Ore. Rev. Stat. § 260.005(18).

VIII. PAC STATUS DETERMINATION AND THRESHOLDS

(a) PAC Definition. A “political action committee” is defined as:

combination of two or more individuals, or a person other than an individual, that has:

(a) Received a contribution for the purpose of supporting or opposing a candidate, measure or political party; or

(b) Made an expenditure for the purpose of supporting or opposing a candidate, measure or political party. For purposes of this paragraph, an expenditure does not include:

(A) A contribution to a candidate or political committee that is required to report the contribution on a statement filed under ORS 260.057 or 260.076 or a certificate filed under ORS 260.112; or

(B) An independent expenditure for which a statement is required to be filed by a person under ORS 260.044.

Id.

(As discussed above in Section II, however, the definition of an “expenditure” is quite vague and broad.)

(b) Threshold for PAC Registration/Reporting. It appears that there is no dollar threshold for registering and reporting as a PAC. *See id.*; *see also id.* § 260.042 (PAC registration requirement).

(c) Threshold for Disclosure of PAC Donors. Donors who give a total of more than \$100 per calendar year are required to be disclosed. *Id.* § 260.083(1)(a)(A).

(d) Disclosure of Donors' Employer Information on PAC Reports. A donor's employer information is required on PAC reports. *See id.* and *id.* § 260.005(15)(b) (defining “occupation”).

IX. REGULATION OF “INCIDENTAL COMMITTEES”

Oregon does not appear to regulate “incidental committees,” but may be said to regulate incidental committees to the extent its PAC definition has no major or primary purpose limitation, as discussed above in Section VII.

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X. PRIVATE ENFORCEMENT ACTIONS

Although the Secretary of State or local campaign finance “filing officer” generally has enforcement authority, *see id.* §§ 260.225, .232, and .234, any elector may petition a court to compel any person who has failed to file or who has filed an insufficient campaign finance report to file a proper report. *Id.* § 260.225(1). If the court determines the complaint is “frivolous” or otherwise does not compel any action, the respondent is entitled to recover “reasonable attorney fees.” *Id.* § 260.225(2).

XI. COORDINATION

(a) **“Content Prong.”** Coordination covers “expenditures,” which, as discussed above in Section II, is quite vague and broad. *See id.* § 260.005(8) and (10).

(b) **Former Employee/Vendor “Conduct Prong.”** The coordination concept covers former employees or vendors and does not specify any particular time period beyond which a former employee or vendor is considered to be outside the scope of the coordination rule. *See id.* § 260.005(10)(d)(A)(ii).

(c) **Public Information Exemption.** The coordination concept does not appear to specifically provide for a public information exemption. *See id.* (s) 260.005(10).

XII. LOBBYING

(a) **General Lobbyist/Lobbyist Principal Donor Disclosure.** Donor disclosure does not appear to be required on lobbying registrations and reports. *See id.* §§ 171.740(1), .745(1)(b), and .750.

(b) **Grassroots Lobbying.** Grassroots lobbying is regulated in Oregon.

Lobbying is defined as “influencing, or attempting to influence, legislative action through oral or written communication with legislative officials, *solicitation of* executive officials or *other persons to influence or attempt to influence legislative action* or attempting to obtain the goodwill of legislative officials.” *Id.* § 171.725(8) (emphasis added).

(IFS has previously confirmed with the Oregon Government Ethics Commission that grassroots lobbying is regulated in Oregon.)

(c) **Forms of Grassroots Lobbying Communications Regulated.** There are no particular forms of grassroots lobbying communications that are regulated. *See id.*

(d) **Grassroots Lobbying Reference to Specific Legislation.** It does not appear that a reference to specific legislation is required for a communication to be regulated as grassroots lobbying. *See id.*

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(e) Grassroots Lobbying Registration and Reporting Thresholds. Lobbyist registration and reporting is required if any person spends either at least \$100 or 24 hours during a calendar quarter on lobbying. *Id.* §§ 171.735(4) and .740; Ore. Admin. R. 199-010-0025.

(f) Donor Disclosure for Grassroots Lobbying. N/A

(g) Earmarked Donor Disclosure for Grassroots Lobbying. N/A

(h) Donor Disclosure Threshold for Grassroots Lobbying (If Not Limited to Earmarked Donors). N/A

(i) Threshold Indexing (If Grassroots Lobbying Is Regulated). The threshold for lobbying disclosure does not appear to be indexed for inflation. *See* Ore. Rev. Stat. §§ 171.735(4) and .740; Ore. Admin. R. 199-010-0025.

PENNSYLVANIA

I. FALSE POLITICAL SPEECH LAW

Pennsylvania does not appear to have a false political speech law.

II. DEFINITION OF EXPENDITURE/EXPRESS ADVOCACY

An “expenditure” is defined, in relevant part, as “the payment, distribution, loan or advancement of money or any valuable thing by a candidate, political committee or other person *for the purpose of influencing the outcome of an election.*” 25 Pa. Stat. § 3241(d) (emphasis added); *see also id.* § 3241(e) (defining “independent expenditure”).

(IFS is aware that, pursuant to a federal court order, this definition is currently limited “only to spending for ‘express advocacy’ as that term is defined in *Buckley [v. Valeo]*.” *See* Stipulated Judgment at 3, *Center for Individual Freedom v. Corbett*, No. 07-2792 (E.D. Pa. Aug. 18, 2007) (ECF No. 28).)

III. ELECTIONEERING COMMUNICATIONS

Pennsylvania does not appear to regulate electioneering communications.

IV. DONOR DISCLOSURE FOR INDEPENDENT EXPENDITURES MADE BY ENTITIES THAT ARE NOT PACS

Donor disclosure does not appear to be required on IE reports. *See* 25 Pa. Stat. § 3246(g).

(*See also* Pa. Dep’t of State, Form DSEB-505 (rev. Sep. 2003), *available at* http://www.dos.pa.gov/VotingElections/CandidatesCommittees/CampaignFinance/Documents/o5o_forms_online/dseb_505.pdf.)

V. DISCLAIMER REQUIREMENTS FOR INDEPENDENT EXPENDITURES AND ELECTIONEERING COMMUNICATIONS

(a) Form of Disclaimer. There is no particular form that required disclaimers must take. *Id.* § 3258(a).

(b) Content of Disclaimer. The disclaimer must “clearly and conspicuously state the name of the person who made or financed the expenditure for the communication.” *Id.*

(c) Types of Media Covered. The disclaimer applies to IEs made “through any broadcasting station, newspaper, magazine, outdoor advertising facility, direct mailing, or any other type of general public political advertising.” *Id.*

(d) Exceptions. The disclaimer does not apply to “bumper stickers, pins, buttons, pens and similar small items upon which the statement cannot be conveniently printed.” 4 Pa. Code § 181.1(b).

PENNSYLVANIA

VI. STATUTORY OR REGULATORY AUTHORITY FOR SUPER PACS

Pennsylvania law does not appear to explicitly provide for super PACs.

VII. MAJOR/PRIMARY PURPOSE FOR PAC STATUS

Pennsylvania's PAC definition does not appear to have any major or primary purpose limitation. *See* 25 Pa. Stat. § 3241(h) and (l).

VIII. PAC STATUS DETERMINATION AND THRESHOLDS

(a) PAC Definition. A “political action committee” is defined as:

any political committee as defined in subsection (h) *which receives contributions and makes expenditures* to, or on behalf of, any candidate other than a candidate's own authorized political committees or the political committees of any State, county, city, borough, township, ward or other regularly constituted party committee of any political party or political body.

Id. § 3241(l) (emphasis added)

A “political committee” is “any committee, club, association or other group of persons which receives contributions or makes expenditures.” *Id.* § 3241(h).

(As discussed above in Section II, however, the definition of an “expenditure” is quite vague and broad.)

(b) Threshold for PAC Registration/Reporting. A PAC is required to register if it “receives contributions in an aggregate amount of two hundred fifty dollars (\$250) or more” (apparently over any period of time). *Id.* § 3244(a); *see also* 4 Pa. Code § 176.1(a) (same). A PAC is required to file reports “if the amount received or expended or liabilities incurred [by the PAC] shall exceed the sum of two hundred fifty dollars (\$250)” (apparently over any period of time). 25 Pa. Code § 3246(a).

These thresholds are not indexed for inflation. *See id.* §§ 3244(a) and 3246(a); 4 Pa. Code § 176.1(a).

(c) Threshold for Disclosure of PAC Donors. Donors who give a total of more than \$50 (apparently over any period of time) are required to be disclosed. *Id.* § 3246(b)(2).

(d) Disclosure of Donors’ Employer Information on PAC Reports. A donor’s employer information is required on PAC reports (if the donor has given more than \$250 during a reporting period). *See id.* § 3246(b)(1).

IX. REGULATION OF “INCIDENTAL COMMITTEES”

Pennsylvania does not appear to regulate “incidental committees.”

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X. PRIVATE ENFORCEMENT ACTIONS

Although the Secretary of the Commonwealth, Attorney General, and county District Attorneys generally have enforcement authority, *see id.* §§ 3259(6) and (7) and 3260b, any group of five or more electors may petition the Commonwealth Court to order an audit of any campaign finance report that is filed with the Secretary of the Commonwealth, *id.* § 3256(a).

XI. COORDINATION

(a) **“Content Prong.”** Coordination covers “expenditures,” which, as discussed above in Section II, is quite vague and broad. *See id.* § 3241(d) and (e).

(b) **Former Employee/Vendor “Conduct Prong.”** The coordination concept does not appear to specifically address former employees or vendors. *See id.*

(c) **Public Information Exemption.** The coordination concept does not appear to specifically provide for a public information exemption. *See id.*

XII. LOBBYING

(a) **General Lobbyist/Lobbyist Principal Donor Disclosure.** Lobbying reports are required to disclose any sources that have “contributed more than 10% of the total resources received by the [lobbying entity] during the reporting period.” 65 Pa. Cons. Stat. § 13A05(b)(5). This “also includes dues and grants received by” the lobbying entity. 51 Pa. Code § 55.1(g)(5).

(b) **Grassroots Lobbying.** Grassroots lobbying is regulated in Pennsylvania.

Lobbying is defined as “an effort to influence legislative or administrative action” in Pennsylvania by “direct or *indirect communication*.” 65 Pa. Cons. Stat. § 13A03 (emphasis added).

The term “indirect communication” means “[a]n effort, whether written, oral or by any other medium, to encourage others, including the general public, to take action, the purpose or foreseeable effect of which is to directly influence legislative action or administrative action.” *Id.* The term specifically includes “letter-writing campaigns, mailings, telephone banks, print and electronic media advertising, billboards, publications and educational campaigns on public issues.” *Id.*

(c) **Forms of Grassroots Lobbying Communications Regulated.** Regulated grassroots lobbying communications include, but are not necessarily limited to: “letter-writing campaigns, mailings, telephone banks, print and electronic media advertising, billboards, publications and educational campaigns.” *See id.*

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(d) Grassroots Lobbying Reference to Specific Legislation. It does not appear that a reference to specific legislation is required for a communication to be regulated as grassroots lobbying. *See id.*

(e) Grassroots Lobbying Registration and Reporting Thresholds. An entity is required to register and report if it spends more than \$2,500 during any quarterly reporting period on lobbying. *Id.* § 13A06.

(f) Donor Disclosure for Grassroots Lobbying. Donor disclosure is required on the same basis as reports for lobbying in general. *See* Section XII(a) above.

(g) Earmarked Donor Disclosure for Grassroots Lobbying. Donor disclosure is not limited to sources of earmarked donations. *See* Section XII(a) above.

(h) Donor Disclosure Threshold for Grassroots Lobbying (If Not Limited to Earmarked Donors). Lobbying reports are required to disclose any sources that have “contributed more than 10% of the total resources received by the [lobbying entity] during the reporting period.” 65 Pa. Cons. Stat. § 13A05(b)(5).

(i) Threshold Indexing (If Grassroots Lobbying Is Regulated). The threshold for lobbying disclosure does not appear to be indexed for inflation. *See id.* § 13A06.

RHODE ISLAND

I. FALSE POLITICAL SPEECH LAW

Rhode Island does not appear to have a false political speech law.

II. DEFINITION OF EXPENDITURE/EXPRESS ADVOCACY

Although Rhode Island does not appear to define “express advocacy,” its formulation of the “functional equivalent” standard in its “independent expenditure” definition appears to adopt the *WRTL* express advocacy standard.

An “independent expenditure” is defined, in relevant part, as:

an expenditure which, when taken as a whole, expressly advocates the election or defeat of a clearly identified candidate, or the passage or defeat of a referendum, or amounts to the functional equivalent of such express advocacy, and is in no way coordinated, as set forth in § 17-25-23, with any candidate's campaign, authorized candidate committee, or political party committee. An expenditure amounts to the functional equivalent of express advocacy if it can only be interpreted by a reasonable person as advocating the election, passage, or defeat of a candidate or referendum, taking into account whether the communication mentions a candidate or referendum and takes a position on a candidate's character, qualifications, or fitness for office.

R.I. Gen. Laws § 17-25-3(15).

(As discussed below in Section VIII(a), Rhode Island’s PAC definition is not dependent on the term “expenditures,” and thus that term, defined at *id.* § 17-25-3(3), is not analyzed here.)

III. ELECTIONEERING COMMUNICATIONS

(a) Regulation of ECs. Rhode Island regulates “electioneering communications.” *See id.* § 17-25-3(14).

(b) What Content Triggers Regulation as an Electioneering Communication. A communication is regulated as an EC if it is:

any print, broadcast, cable, satellite, or electronic media communication not coordinated, as set forth in § 17-25-23, with any candidate, authorized candidate campaign committee, or political party committee and which *unambiguously identifies a candidate or referendum* and is made either within sixty (60) days before a general or special election or town meeting for the office sought by the candidate or referendum; or thirty (30) days before a primary election, for the office sought by the candidate; and is targeted to the relevant electorate.

(i) A communication which refers to a clearly identified candidate or referendum is “targeted to the relevant electorate” if the communication can be received by two thousand (2,000) or more

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persons in the district the candidate seeks to represent or the constituency voting on the referendum.

Id. (emphasis added).

(c) Types of Media Covered. Electioneering communications cover “any print, broadcast, cable, satellite, or electronic media communication.” *Id.*

(d) Reporting Threshold. The threshold for reporting is making ECs totaling more than \$1,000 during a calendar year. *Id.* § 17-25.3-1(b).

(This threshold does not appear to be indexed for inflation. *See id.*)

(e) Time Windows. Rhode Island law defines the term “electioneering communication” to encompass communications made within the federal 30/60-day pre-election windows. *Id.* § 17-25-3(14).

(f) Jurisdictional Limitation. The definition of an EC includes a jurisdictional limitation. *See id.*

(g) Donor Disclosure. EC reports are required to disclose all donors who gave a total of \$1,000 or more during the “election cycle” to the sponsor of the EC, except that “payments made pursuant to commercial activities . . . in the regular course of a person’s” or entity’s business are not required to be disclosed. *Id.* § 17-25.3-1(h). Thus, donor disclosure does not appear to be limited to earmarked donations.

Alternatively, if the sponsor of an EC funds the EC using a “separate campaign-related account,” then only the donors who have given a total of \$1,000 or more during the “election cycle” to that account are required to be disclosed. *Id.* However, if a separate account is established, then the sponsor of an EC may only fund ECs, IEs, and regulated “covered transfers” using that account, the account may not accept transfers from the sponsor’s general treasury, and the account may not be used for any other purposes. *Id.* § 17-25.3-2.

In addition, if a donor and the sponsor of an EC “mutually agree, at the time of a donation,” that the donation may not be used for IEs or ECs and the restriction is memorialized in a “written certification by the [CFO] of the sponsor of the” EC, then those donors also are not required to be disclosed. *Id.* § 17-25.3-1(i).

(h) 501(c)(3) Exemption. 501(c)(3) entities appear to be exempt from the electioneering communications reporting requirement. *See id.* §§ 17-25.3-1(b) (applying the EC reporting requirement to “[a]ny person” or “business entity”) and 17-25-3(1) and (9) (excluding 501(c)(3) entities from the definitions of “business entity” and “person”).

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(i) Media Exemption. A media exemption applies for:

A communication appearing in a news story, commentary, or editorial distributed through the facilities of any broadcasting station, unless such facilities are owned or controlled by any political party, political committee, or candidate.

Id. § 17-25-3(14)(ii)(A).

(j) Other Exemptions. Other exemptions apply for:

(B) A communication which constitutes a candidate debate or forum conducted pursuant to regulations adopted by the board of elections or which solely promotes such a debate or forum and is made by or on behalf of the person sponsoring the debate or forum; or

(C) A communication made by any business entity to its members, owners, stockholders, or employees;

(D) A communication over the Internet, except for (I) Communications placed for a fee on the website of another person, business entity, or political action committee; and (II) Websites formed primarily for the purpose, or whose primary purpose is, to expressly advocate the election or defeat of a clearly identified candidate or the passage or defeat of a referendum.

Id. § 17-25-3(14)(ii).

In addition, “exempt nonprofits” that do not otherwise qualify as a PAC are not subject to the EC reporting and disclaimer requirements. *See id.* §§ 17-25.3-1, 17-25.3-3, and 17-25-3(1) and (9) (excluding an “exempt nonprofit” from the definitions of “business entity” and “person.” An “exempt nonprofit” is defined as a 501(c)(4) entity “that spends an aggregate annual amount of no more than ten percent (10%) of its annual expenses or no more than fifteen thousand dollars (\$15,000), whichever is less, on independent expenditures, electioneering communications, and covered transfers as defined herein and certifies the same to the board of elections seven (7) days before and after a primary election and seven (7) days before and after a general or special election.” *Id.* § 17-25-3(19).

IV. DONOR DISCLOSURE FOR INDEPENDENT EXPENDITURES MADE BY ENTITIES THAT ARE NOT PACS

(a) Donor Disclosure. IE reports are required to disclose all donors who gave a total of \$1,000 or more during the “election cycle” to the sponsor of the IE, except that “payments made pursuant to commercial activities . . . in the regular course of a person’s” or entity’s business are not required to be disclosed. *Id.* § 17-25.3-1(h). Thus, donor disclosure does not appear to be limited to earmarked donations.

Alternatively, if the sponsor of an IE funds the IE using a “separate campaign-related account,” then only the donors who have given a total of \$1,000 or more during the “election cycle” to that account are required to be disclosed. *Id.* However, if a separate

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account is established, then the sponsor of an IE may only fund ECs, IEs, and regulated “covered transfers” using that account, the account may not accept transfers from the sponsor’s general treasury, and the account may not be used for any other purposes. *Id.* § 17-25.3-2.

In addition, if a donor and the sponsor of an IE “mutually agree, at the time of a donation,” that the donation may not be used for IEs or ECs and the restriction is memorialized in a “written certification by the [CFO] of the sponsor of the” IE, then those donors also are not required to be disclosed. *Id.* § 17-25.3-1(i).

(b) Threshold for Donor Disclosure. For both the general donor disclosure requirement and the disclosure of donors to a “separate campaign-related account,” a donor is required to be disclosed if the donor has given a total of \$1,000 or more to the sponsor of the IE during an “election cycle.” *Id.* § 17-25.3-1(h).

V. DISCLAIMER REQUIREMENTS FOR INDEPENDENT EXPENDITURES AND ELECTIONEERING COMMUNICATIONS

(a) Form of Disclaimer. Paid television advertising and paid Internet video advertising are required to include certain disclaimer content by a combination of “video, photographic or similar image,” “audio,” and “written” information; while other disclaimer requirements are not specific as to form. *See id.* §§ 17-25.3-3, 17-23-1, 17-23-2, and 17-23-19.

(b) Content of Disclaimer.

- For “written, typed, or other printed” IEs and ECs, the disclaimer must state:

“Paid for by’ and the name of the entity, the name of its chief executive officer or equivalent, and its principal business address.” If the sponsor is a 501(c) entity other than a 501(c)(3), bear upon its face the words “Top Five Donors’ followed by a list of the five (5) persons or entities making the largest aggregate donations to such person, business entity or political action committee during the twelve (12) month period before the date of such communication,” except that donors who are not required to be disclosed on IE and EC reports (as discussed above in Sections III(g) and IV(a)) are not required to be listed in the disclaimer. *Id.* § 17-25.3-3(a).

- For “paid television advertising or paid Internet video advertising” IEs and ECs, the disclaimer must contain simultaneously for at least four seconds:

(1) A clearly identifiable video, photographic or similar image of the entity’s chief executive officer or equivalent; and

(2) A personal audio message, in the following form: “I am ____ (name of entity’s chief executive officer or equivalent), ____ (title) of ____ (entity), and I approved its content.”

For 501(c) entities other than 501(c)(3)s, the disclaimer must “also include a written message in the following form: ‘The top five (5) donors to the organization responsible for this advertisement are’ followed by a list of the

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five (5) persons or entities making the largest aggregate donations during the twelve (12) month period before the date of such advertisement,” except that donors who are not required to be disclosed on IE and EC reports (as discussed above in Sections III(g) and IV(a)) are not required to be listed in the disclaimer. *Id.* § 17-25.3-3(c).

- For “paid radio advertising or paid Internet audio advertising” IEs and ECs, the disclaimer must “end[] with a personal audio statement by the entity's chief executive officer or equivalent; (1) Identifying the entity paying for the expenditure; and (2) A personal audio message, in the following form: ‘I am ____ (name of entity's chief executive officer or equivalent), ____ (title), of ____ (entity), and I approved its content.’”

For 501(c) entities other than 501(c)(3)s, the disclaimer must “also include: (A) An audio message in the following form: ‘The top five (5) donors to the organization responsible for this advertisement are’ followed by a list of the five (5) persons or entities making the largest aggregate donations during the twelve (12) month period before the date of such advertisement . . . (B) In the case of such an advertisement that is thirty (30) seconds in duration or shorter, an audio message providing a website address that lists such five (5) persons or entities, provided that no contributor shall be listed who is not required to be disclosed in a report to the board of elections by the person, business entity, or political action committee,” except that donors who are not required to be disclosed on IE and EC reports (as discussed above in Sections III(g) and IV(a)) are not required to be listed in the disclaimer. *Id.* § 17-25.3-3(d).

- For “automated telephone call[]” IEs and ECs, “the narrative of the telephone call [must] identif[y] the person, business entity or political action committee making the expenditure and its chief executive officer or equivalent.”

For 501(c) entities other than 501(c)(3)s, the disclaimer must “also include an audio message in the following form: ‘The top five (5) donors to the organization responsible for this telephone call are’ followed by a list of the five (5) persons or entities making the largest aggregate donations during the twelve (12) month period before the date of such telephone call,” except that donors who are not required to be disclosed on IE and EC reports (as discussed above in Sections III(g) and IV(a)) are not required to be listed in the disclaimer. *Id.* § 17-25.3-3(e).

- In addition, any paid newspaper “advertising or reading columns . . . designed or tending to aid, injure, or defeat any candidate for public office or any question submitted to the voters” must identify “the name of the chairperson or secretary or the names of two (2) officers of the political or other organization inserting the paid matter, or the name of some voter who is responsible for it, with that person's residence and the street and number . . . in the nature of a signature” and must “be preceded by or followed by the word ‘advertisement’ in a separate line.” *Id.* § 17-23-1.
- Any “circular, flier, or poster designed or tending to injure or defeat any candidate for nomination or election to any public office, by criticizing the candidate's personal character or political action, or designed or tending to aid, injure, or defeat any question submitted to the voters” must indicate “in a conspicuous place the name of the author and either the names of the

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chairperson and secretary, or of two (2) officers, of the political or other organization issuing the poster, flier, or circular, or of some voter who is responsible for it, with the voter's name and residence, and the street and numbers, if any.” *Id.* § 17-23-2.

- Broadcast ads pertaining to referenda questions must “prominently display the state in which the referenda election is to be held.” *Id.* § 17-23-19.

(c) Types of Media Covered. The various disclaimer requirements apply to:

- “written, typed, or other printed” materials;
- “paid television advertising or paid Internet video advertising”;
- “paid radio advertising or paid Internet audio advertising”;
- “automated telephone calls”;
- newspaper “advertising or reading columns”;
- “circular[s], flier[s], or poster[s].”

Id. §§ 17-25.3-3, 17-23-1, 17-23-2, and 17-23-19.

(d) Exceptions. 501(c)(3) entities and “exempt nonprofits” (as discussed above in Section III(j)) are exempt from the disclaimer requirements that specifically apply to IEs and ECs. *See id.* §§ 17-25.3-3 and 17-25-3(1), (9), and (19).

In addition, those disclaimer requirements do not apply to:

- (1) Any editorial, news story, or commentary published in any newspaper, magazine or journal on its own behalf and upon its own responsibility and for which it does not charge or receive any compensation whatsoever;
- (2) Political paraphernalia including pins, buttons, badges, emblems, hats, bumper stickers or other similar materials; or
- (3) Signs or banners with a surface area of not more than thirty-two (32) square feet.

Id. § 17-25.3-3(b).

VI. STATUTORY OR REGULATORY AUTHORITY FOR SUPER PACS

Rhode Island law does not appear to explicitly provide for super PACs.

VII. MAJOR/PRIMARY PURPOSE FOR PAC STATUS

Rhode Island’s PAC definition does not appear to have any major or primary purpose limitation. *See id.* § 17-25-3(10).

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VIII. PAC STATUS DETERMINATION AND THRESHOLDS

(a) **PAC Definition.** Rhode Island’s PAC definition does not appear to be tied to any clearly defined activities.

A “political action committee” is defined, in relevant part, as “any group of two (2) or more persons that accepts any *contributions to be used for advocating the election or defeat of any candidate or candidates.*” *Id.* (emphasis added).

A “contribution” is defined as any “transfer[] of money, credit or debit card transactions on-line or electronic payment systems such as ‘pay pal,’ paid personal services, or other thing of value to . . . any . . . political action committee.” *Id.* § 17-25-3(3).

The phrase “advocating the election or defeat of any candidate” is not defined.

(b) **Threshold for PAC Registration/Reporting.** It does not appear that there is any monetary threshold for registering and reporting as a PAC. *See id.* § 17-25-15.

(c) **Threshold for Disclosure of PAC Donors.** Donors who give a total of more than \$100 during a calendar year are required to be disclosed. *Id.* §§ 17-25-7(a) and 17-25-15(c)(1).

(d) **Disclosure of Donors’ Employer Information on PAC Reports.** A donor’s employer information is required on PAC reports. *See id.* § 17-25-7(a).

IX. REGULATION OF “INCIDENTAL COMMITTEES”

Rhode Island does not appear to regulate “incidental committees.”

X. PRIVATE ENFORCEMENT ACTIONS

Private enforcement actions do not appear to be permitted. *See id.* § 17-25-5(a)(7).

XI. COORDINATION

(a) **“Content Prong.”** Coordination covers IEs and ECs. *Id.* § 17-25-3(15) and (14).

(b) **Former Employee/Vendor “Conduct Prong.”** The coordination rule covers staff/vendors who have been employed or retained by a candidate during the same “election cycle.” *See id.* § 17-25-23(2) and (4).

An “election cycle” is defined as:

the twenty-four (24) month period commencing on January 1 of odd number years and ending on December 31 of even number years; provided, with respect to the public financing of election campaigns of general officers under §§ 17-25-19, 17-25-20, and 17-25-25, “election cycle” means the forty-eight (48)

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month period commencing on January 1 of odd numbered years and ending December 31 of even numbered years.

Id. § 17-25-3(5).

(c) **Public Information Exemption.** The coordination concept does not appear to specifically provide for a public information exemption. *See id.* § 17-25-23.

XII. LOBBYING

(a) **General Lobbyist/Lobbyist Principal Donor Disclosure.** Donor disclosure does not appear to be required on lobbying registrations and reports. *See id.* §§ 22-10-5 and -9, and 42-139-3, -4, and -6; R.I. Admin. Code §§ 57-1-1:5, 57-1-1:9, and 57-1-2:6.

(b) **Grassroots Lobbying.** Grassroots lobbying appears to be regulated in Rhode Island.

For purposes of legislative lobbying, lobbying is defined as “acting directly or *soliciting others* to act for the purpose of promoting, opposing, amending, or influencing in any manner the passage by the general assembly of any legislation or the action on that legislation by the governor.” R.I. Gen. Laws § 22-10-2(3) (emphasis added).

For purposes of executive branch lobbying, lobbying is defined as “acting directly or *soliciting others* to act for the purpose of promoting, opposing, or influencing . . . any policy-making decision or policy-making actions of the executive branch of government or of public corporations” *Id.* § 42-139-2(1)(i) (emphasis added).

(IFS has received conflicting interpretations from the Rhode Island Secretary of State’s office as to whether it believes grassroots lobbying is regulated.)

(c) **Forms of Grassroots Lobbying Communications Regulated.** There are no particular forms of communications that are subject to regulation. *See id.* §§ 22-10-2(3) and 42-139-2(1)(i). However, the executive branch lobbying law specifically excludes “[p]articipation in or attendance at a rally, protest or other public assemblage organized for the expression of political or social views, positions or beliefs.” *Id.* § 42-139-2-1(ii)(A).

(d) **Grassroots Lobbying Reference to Specific Legislation.** It does not appear that a reference to specific legislation is required for a communication to be regulated as grassroots lobbying. *See id.* §§ 22-10-2(3) and 42-139-2(1)(i).

(e) **Grassroots Lobbying Registration and Reporting Thresholds.** There do not appear to be any monetary thresholds for lobbyist registration and reporting. *See id.* §§ 22-10-2(4); 22-10-6; 42-139-2(2); 42-139-4; and 42-139-9.

(f) **Donor Disclosure for Grassroots Lobbying.** Donor disclosure does not appear to be required. *See* Section XII(a) above.

(g) **Earmarked Donor Disclosure for Grassroots Lobbying.** N/A

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(h) Donor Disclosure Threshold for Grassroots Lobbying (If Not Limited to Earmarked Donors). N/A

(i) Threshold Indexing (If Grassroots Lobbying Is Regulated). There are no thresholds for lobbyist registration and reporting. *See* Section XII(e) above.

SOUTH CAROLINA

I. FALSE POLITICAL SPEECH LAW

South Carolina does not appear to have a false political speech law.

II. DEFINITION OF EXPENDITURE/EXPRESS ADVOCACY

South Carolina uses a “promotes or supports” or “attacks or opposes” content standard during the 45 days prior to an election for defining an independent expenditure for certain types of public communications.

An “independent expenditure” is defined as:

(a) an expenditure made directly or indirectly by a person to advocate the election or defeat of a clearly identified candidate or ballot measure; and

(b) when taken as a whole and in context, the expenditure made by a person *to influence the outcome of an elective office or ballot measure* but which is not:

(i) made to; (ii) controlled by; (iii) coordinated with; (iv) requested by; or (v) made upon consultation with a candidate or an agent of a candidate; or a committee or agent of a committee; or a ballot measure committee or an agent of a ballot measure committee.

S.C. Code § 8-13-1300(17) (emphasis added).

To “[i]nfluence the outcome of an elective office” is defined as:

(a) expressly advocating the election or defeat of a clearly identified candidate using words including or substantially similar to “vote for”, “elect”, “cast your ballot for”, “Smith for Governor”, “vote against”, “defeat”, or “reject”;

(b) communicating campaign slogans or individual words that, taken in context, have no other reasonable meaning other than to urge the election or defeat of a clearly identified candidate including or substantially similar to slogans or words such as “Smith’s the One”, “Jones 2000”, “Smith/Jones”, “Jones!”, or “Smith-A man for the People!”; or

(c) any communication made, not more than forty-five days before an election, which promotes or supports a candidate or attacks or opposes a candidate, regardless of whether the communication expressly advocates a vote for or against a candidate. For purposes of this paragraph, “communication” means (i) any paid advertisement or purchased program time broadcast over television or radio; (ii) any paid message conveyed through telephone banks, direct mail, or electronic mail; or (iii) any paid advertisement that costs more than five thousand dollars that is conveyed through a communication medium other than those set forth in subsections (i) or (ii) of this paragraph. “Communication” does not include news, commentary, or editorial programming or article, or communication to an organization's own members.

Id. § 8-13-1300(31).

SOUTH CAROLINA

III. ELECTIONEERING COMMUNICATIONS

South Carolina does not regulate electioneering communications.

IV. DONOR DISCLOSURE FOR INDEPENDENT EXPENDITURES MADE BY ENTITIES THAT ARE NOT PACS

South Carolina law purports to require any person or entity that sponsors independent expenditures totaling more than \$500 during an “election cycle” to register and report as a PAC. *Id.* § 8-13-1300(6)(b).

(IFS is aware, however, that South Carolina’s political committee registration and reporting requirements have been invalidated. *See South Carolina Citizens for Life, Inc. v. Krawcheck*, No. 06-02773, slip op. at 10-12 (D.S.C. Sept. 13, 2010). IFS also confirmed with the South Carolina Ethics Commission earlier this year that there are currently effectively no IE reporting requirements because the agency is not enforcing the state’s PAC laws, and no replacement law has been enacted to regulate state PACs in South Carolina.)

V. DISCLAIMER REQUIREMENTS FOR INDEPENDENT EXPENDITURES AND ELECTIONEERING COMMUNICATIONS

(a) **Form of Disclaimer.** Disclaimers must be printed or “spoken.” S.C. Code § 8-13-1354.

(b) **Content of Disclaimer.** The disclaimer must identify the sponsor’s “name and address.” *Id.*

(c) **Types of Media Covered.** The disclaimer requirement applies to any “printed matter” and “broadcast.” *Id.*

(d) **Exceptions.** “Campaign buttons, balloons, yard signs, or similar items are exempt from this requirement.” *Id.*

VI. STATUTORY OR REGULATORY AUTHORITY FOR SUPER PACS

South Carolina law does not appear to explicitly provide for super PACs.

(As discussed above in Section IV, South Carolina is not currently regulating PACs, so a super PAC may effectively operate in the state.)

VII. MAJOR/PRIMARY PURPOSE FOR PAC STATUS

South Carolina’s PAC definition does not have any major or primary purpose limitation. *See id.* § 8-13-1300(6).

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VIII. PAC STATUS DETERMINATION AND THRESHOLDS

(a) PAC Definition. PAC status is triggered by receiving contributions or making expenditures/independent expenditures/contributions.

A political “committee” is defined, in relevant part, as:

an association, a club, an organization, or a group of persons which, to influence the outcome of an elective office, *receives contributions or makes expenditures* in excess of five hundred dollars in the aggregate during an election cycle. It also means a person who, to influence the outcome of an elective office, makes:

(a) *contributions* aggregating at least twenty-five thousand dollars during an election cycle to or at the request of a candidate or a committee, or a combination of them; or

(b) *independent expenditures* aggregating five hundred dollars or more during an election cycle for the election or defeat of a candidate.

Id.

(As discussed above in Section II, however, South Carolina broadly defines an “expenditure.”)

(b) Threshold for PAC Registration/Reporting. The threshold for registering as a PAC is receiving contributions or making expenditures/independent expenditures totaling more than \$500 during an “election cycle” or making contributions totaling \$25,000 or more during an “election cycle.” *Id.*

An “election cycle” is defined as “the period of a term of office beginning on the day after the general election for the office, up to and including the following general election for the same office, including a primary, special primary, or special election.” *Id.* § 8-13-1300(10).

(c) Threshold for Disclosure of PAC Donors. “[T]he name and address of each person making a contribution of more than one hundred dollars and the amount and date of receipt of each contribution” must be disclosed. *Id.* § 8-13-1308(F)(2).

(The \$100 disclosure threshold appears to be per transaction.)

(d) Disclosure of Donors’ Employer Information on PAC Reports. Donors’ employer information is not required on PAC reports. *See id.*

IX. REGULATION OF “INCIDENTAL COMMITTEES”

South Carolina does not appear to regulate “incidental committees” as such.

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(However, as discussed above in Sections IV and VII, the low threshold for registering and reporting as a PAC and the lack of any major/primary purpose limitation means that South Carolina's PAC law effectively regulates "incidental committees." On the other hand, as also discussed in those sections, the state's PAC law was invalidated by a federal court, and the state is not currently enforcing it.)

X. PRIVATE ENFORCEMENT ACTIONS

The South Carolina Ethics Commission is primarily responsible for enforcement of the state's campaign finance laws. *See id.* § 8-13-320(9). However, any person may initiate a civil action in the court of common pleas alleging a violation by a candidate during the 50 days before an election. *Id.* § 8-13-320(9)(b)(1).

XI. COORDINATION

(a) **"Content Prong."** Coordination covers IEs, which, as discussed above in Section II, includes certain communications that "promote[] or support[]" or "attack[] or oppose[]" candidates during the 45 days prior to an election. *Id.* § 8-13-1300(17).

(b) **Former Employee/Vendor "Conduct Prong."** The coordination rule does not specifically address former employees or vendors. *See id.* and *id.* § 8-13-1300(33).

(c) **Public Information Exemption.** The coordination concept does not appear to specifically provide for a public information exemption. *See id.*

XII. LOBBYING

(a) **General Lobbyist/Lobbyist Principal Donor Disclosure.** If a lobbyist principal is a voluntary membership organization, the principal must disclose on its lobbying reports "dues, fees, or other amounts payable to the organization during any calendar year from a member." *Id.* § 2-17-35(A).

Because this statutory language includes "dues, fees, or other amounts payable to the organization," the donor disclosure requirement does not appear to be limited to funds that are earmarked for lobbying.

The threshold for donor disclosure is if funds provided to the organization total more than \$500 during the calendar year *and* are also more than 20% of the total "contributions" the organization receives during the calendar year. *Id.*

(b) **Grassroots Lobbying.** Grassroots lobbying is generally not regulated in South Carolina.

"Lobbying" is defined as:

promoting or opposing *through direct communication with public officials or public employees*: (a) the introduction or enactment of legislation before the

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General Assembly or the committees or members of the General Assembly; (b) covered gubernatorial actions; (c) covered agency actions; or (d) consideration of the election or appointment of an individual to a public office elected or appointed by the General Assembly.

Id. § 2-17-10(12) (emphasis added).

(IFS has confirmed with the state Ethics Commission that grassroots lobbying generally is not regulated in South Carolina. However, IFS has been advised that if an organization sends out pre-printed postcards that members of the public then forward to covered officials, this would qualify as a form of “direct communication” under the lobbying definition.

In addition, please note that an entity that publishes legislative scorecards (including ranking or rating the actions or votes of the Governor, Lieutenant Governor, or members of the General Assembly) must file a “Rating Entity Registration Form” with the state Ethics Commission no later than April 1 of each year. *Id.* § 2-17-45. Among other things, the report must disclose each officer and director of the entity and “each member of the entity who is a lobbyist or a lobbyist’s principal.” *Id.*)

(c) Forms of Grassroots Lobbying Communications Regulated. N/A

(d) Grassroots Lobbying Reference to Specific Legislation. N/A

(e) Grassroots Lobbying Registration and Reporting Thresholds. N/A

(f) Donor Disclosure for Grassroots Lobbying. N/A

(g) Earmarked Donor Disclosure for Grassroots Lobbying. N/A

(h) Donor Disclosure Threshold for Grassroots Lobbying (If Not Limited to Earmarked Donors). N/A

(i) Threshold Indexing (If Grassroots Lobbying Is Regulated). N/A

SOUTH DAKOTA

I. FALSE POLITICAL SPEECH LAW

South Dakota does not appear to have a false political speech law.

II. DEFINITION OF EXPENDITURE/EXPRESS ADVOCACY

An “independent communication expenditure” is defined as an expenditure “for a communication concerning a candidate or a ballot question which is not made to, controlled by, coordinated with, requested by, or made upon consultation with that candidate, political committee, or agent of a candidate or political committee.”

S.D. Codified Laws § 12-27-1(11).²⁷

III. ELECTIONEERING COMMUNICATIONS

(a) Regulation of ECs. As discussed above in Section II, given the extremely broad definition of an “independent communication expenditure,” South Dakota law essentially regulates ECs as IEs. *See id.*

(b) What Content Triggers Regulation as an Electioneering Communication. As discussed above in Section II, a communication is regulated as an IE if it “concern[s] a candidate or a ballot question.” *Id.*

(c) Types of Media Covered. South Dakota law does not specify any particular types of media in which communications “concerning a candidate or a ballot question” are regulated. *Id.*

(d) Reporting Threshold. The threshold for reporting is making “independent communication expenditures” totaling more than \$100. *Id.* § 12-27-16(2).

(This threshold does not appear to be indexed for inflation. *See id.*)

(e) Time Windows. There are no particular time windows when “independent communication expenditures” are regulated. *See id.* § 12-27-1(11).

(f) Jurisdictional Limitation. There is no particular jurisdictional limitation for “independent communication expenditures.” *See id.*

(g) Donor Disclosure. Disclaimers for “independent expenditure communications” are required to identify “the five persons making the largest contributions in aggregate to the entity during the twelve months preceding that communication.” *Id.* § 12-27-16(1)(c). A “contribution” is defined as funds or anything of value provided “for the purpose of influencing” an election or the passage or defeat of a ballot question. *Id.* § 12-27-1(6).

²⁷ While South Dakota law also defines “expressly advocate,” it uses this term in the limited context of exempting from regulation polling questions that do not contain express advocacy. *See id.* §§ 12-27-1(9); 12-27-16(6)(e).

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Thus, arguably, only donors whose funds were earmarked for a political purpose are required to be identified.

(h) 501(c)(3) Exemption. There do not appear to be any exemptions for 501(c)(3) entities.

(i) Media Exemption. A media exemption applies for:

(a) Any news article, editorial endorsement, opinion or commentary writing, or letter to the editor printed in a newspaper, magazine, flyer, pamphlet, or other periodical not owned or controlled by a candidate or political committee;

(b) Any editorial endorsement or opinion aired by a broadcast facility not owned or controlled by a candidate or political committee.

Id. § 12-27-16(6).

(j) Other Exemptions. Other exemptions apply for:

c) Any communication by a person made in the regular course and scope of the person's business or ministry or any communication made by a membership entity solely to members of the entity and the members' families;

(d) Any communication that refers to any candidate only as part of the popular name of a bill or statute; and

(e) Any communication used for the purpose of polling if the poll question does not expressly advocate for or against a candidate, public office holder, ballot question, or political party.

Id.

IV. **DONOR DISCLOSURE FOR INDEPENDENT EXPENDITURES MADE BY ENTITIES THAT ARE NOT PACS**

(a) Donor Disclosure. As discussed above in Section III(g), disclaimers for "independent expenditure communications" are required to identify "the five persons making the largest contributions in aggregate to the entity during the twelve months preceding that communication." *Id.* § 12-27-16(1)(c). A "contribution" is defined as funds or anything of value provided "for the purpose of influencing" an election or the passage or defeat of a ballot question. *Id.* § 12-27-1(6). Thus, arguably, only donors whose funds were earmarked for a political purpose are required to be identified.

(b) Threshold for Donor Disclosure. There is no particular dollar threshold for donor disclosure. The organization's top five contributors during the prior 12 months are required to be identified in disclaimers for "independent communication expenditures." *Id.* § 12-27-16(1)(c).

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There also does not appear to be any allowance under which donors may avoid disclosure if they prohibit their donations from being used to fund IEs, or whereby disclosure may be limited to donors to a segregated account that is used to fund IEs.

V. DISCLAIMER REQUIREMENTS FOR INDEPENDENT EXPENDITURES AND ELECTIONEERING COMMUNICATIONS

(a) Form of Disclaimer. There are no particular form requirements for disclaimers. *See id.* § 12-27-16(1).

(b) Content of Disclaimer. The disclaimer must include the following:

(a) Identif[y] the person or entity making the independent communication expenditure for that communication;

(b) State[] the mailing address and website address, if applicable, of the person or entity; and

(c) If an independent expenditure is undertaken by an entity not including a candidate, public office holder, political party, or political committee, the following notation must be included: “Top Five Contributors,” including a listing of the names of the five persons making the largest contributions in aggregate to the entity during the twelve months preceding that communication. An independent communication expenditure made by a person or entity shall include the following: “This communication is independently funded and not made in consultation with any candidate, public office holder, or political committee.”

Id.

(c) Types of Media Covered. The disclaimer requirement applies to any “independent communication expenditure.” *Id.* As discussed in Section II above, this term appears to cover any type of public communication.

(d) Exceptions. “Independent expenditure communications” that cost less than \$100 are not subject to the disclaimer requirement. *See id.* In addition, the following are not regulated as “independent expenditure communications”:

(a) Any news article, editorial endorsement, opinion or commentary writing, or letter to the editor printed in a newspaper, magazine, flyer, pamphlet, or other periodical not owned or controlled by a candidate or political committee;

(b) Any editorial endorsement or opinion aired by a broadcast facility not owned or controlled by a candidate or political committee;

(c) Any communication by a person made in the regular course and scope of the person's business or ministry or any communication made by a membership entity solely to members of the entity and the members' families;

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(d) Any communication that refers to any candidate only as part of the popular name of a bill or statute; and

(e) Any communication used for the purpose of polling if the poll question does not expressly advocate for or against a candidate, public office holder, ballot question, or political party.

Id. § 12-27-16(6).

Thus, these exempt communications are not subject to the disclaimer requirement. *See id.* § 12-27-16(1).

VI. STATUTORY OR REGULATORY AUTHORITY FOR SUPER PACS

South Dakota law does not appear to explicitly provide for super PACs.

VII. MAJOR/PRIMARY PURPOSE FOR PAC STATUS

South Dakota's PAC definition does not have any major or primary purpose limitation. *See id.* § 12-27-1(17).

(However, a “[p]erson who makes a contribution to a political committee” or an “[e]ntity that makes a contribution to a ballot question committee from treasury funds” is not a PAC. *Id.*)

VIII. PAC STATUS DETERMINATION AND THRESHOLDS

(a) PAC Definition. PAC status is triggered by “rais[ing], collect[ing], or disburs[ing] contributions.” *Id.*

(b) Threshold for PAC Registration/Reporting. The threshold for registering as a PAC is when the entity has “made contributions, received contributions, or paid expenses in excess of five hundred dollars.” *Id.* § 12-27-3.

(c) Threshold for Disclosure of PAC Donors. Contributors who have given a total of more than \$100 during the calendar year are required to be disclosed on PAC reports. *Id.* § 12-27-24(12).

(d) Disclosure of Donors' Employer Information on PAC Reports. A contributor's employer information is not required on PAC reports. *See id.*

IX. REGULATION OF “INCIDENTAL COMMITTEES”

South Dakota does not appear to regulate “incidental committees.”

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X. PRIVATE ENFORCEMENT ACTIONS

South Dakota does not provide for private enforcement actions. The state Attorney General and local prosecutors are responsible for enforcement of the campaign finance laws. *See id.* § 12-27-35 through -37); *see also id.* § 12-27-40.

XI. COORDINATION

(a) “Content Prong.” Coordination covers “independent communication expenditures,” which, as discussed above in Section II, mean communications “concerning a candidate or a ballot question.” *Id.* § 12-27-1(11)).

(b) Former Employee/Vendor “Conduct Prong.” The coordination rule does not specifically address former employees or vendors. *See id.*

(c) Public Information Exemption. The coordination concept does not appear to specifically provide for a public information exemption. *See id.*

XII. LOBBYING

(a) General Lobbyist/Lobbyist Principal Donor Disclosure. Donor disclosure does not appear to be required on lobbying registrations or reports. *See id.* §§ 2-12-1, -2, -5, and -11.

(b) Grassroots Lobbying. It is not entirely clear whether grassroots lobbying is generally not regulated in South Dakota.

Lobbying is defined, in relevant part, as “seek[ing] the introduction of legislation or to promote, oppose, or influence in any manner the passage by the Legislature of any legislation affecting the special interests of any agency, individual, association, or business, as distinct from those of the whole people of the state.” *Id.* § 2-12-1.

(While this definition is broad enough to cover grassroots lobbying, IFS has been advised by the South Dakota Secretary of State’s office that grassroots lobbying is not regulated in the state.)

(c) Forms of Grassroots Lobbying Communications Regulated. If grassroots lobbying is regulated, there are no particular forms of lobbying communications that are regulated. *See id.*

(d) Grassroots Lobbying Reference to Specific Legislation. If grassroots lobbying is regulated, it does not appear that a reference to specific legislation is required for a communication to be regarded as lobbying. *See id.*

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(e) Grassroots Lobbying Registration and Reporting Thresholds. If grassroots lobbying is regulated, there do not appear to be any thresholds for registration and reporting. *See* S.D. Codified Laws §§ 2-12-1, -2, -3, and -11.

(f) Donor Disclosure for Grassroots Lobbying. As discussed above in XII(a), if grassroots lobbying is regulated, donor disclosure does not appear to be required on lobbying registrations or reports. *See id.* §§ 2-12-1, -2, -5, and -11.

(g) Earmarked Donor Disclosure for Grassroots Lobbying. N/A

(h) Donor Disclosure Threshold for Grassroots Lobbying (If Not Limited to Earmarked Donors). N/A

(i) Threshold Indexing (If Grassroots Lobbying Is Regulated). There are no thresholds, as discussed above in (a), (e), (f), and (h).

TENNESSEE

I. FALSE POLITICAL SPEECH LAW

Under Tennessee law:

It is a Class C misdemeanor for any person to publish or distribute or cause to be published or distributed any campaign literature in opposition to any candidate in any election if such person knows that any such statement, charge, allegation, or other matter contained therein with respect to such candidate is false.

Tenn. Code § 2-19-142.

II. DEFINITION OF EXPENDITURE/EXPRESS ADVOCACY

An “expenditure” is defined, in relevant part, as “a purchase, payment, distribution, loan, advance, deposit or gift of money or anything of value made *for the purpose of influencing* a measure or the nomination for election or election of any person to public office.” Tenn. Code § 2-10-102(6)(A) (emphasis added).

The statute also requires certain disclaimers and reporting for “communications expressly advocat[ing] the election or defeat of a clearly identified candidate.” *See id.* §§ 2-19-120 and -132.

“Expressly advocating” is defined as “any communication containing a message advocating election or defeat, including but not limited to the name of the candidate, or expressions such as ‘vote for’, ‘elect’, ‘support’, ‘cast your ballot for’, or ‘vote against’, ‘defeat’ or ‘reject’.” Tenn. Registry of Election Finance R. 0530-1-3-.07.

Although the “express advocacy” definition is the *Buckley* standard for the purposes of the independent expenditure disclaimer and reporting requirements, the broader “expenditure” definition is still used for determining PAC status. *See* Tenn. Code § 2-10-102(12).

III. ELECTIONEERING COMMUNICATIONS

Tennessee does not appear to regulate electioneering communications.

IV. DONOR DISCLOSURE FOR INDEPENDENT EXPENDITURES MADE BY ENTITIES THAT ARE NOT PACS

(a) Donor Disclosure. Tennessee requires all corporations “that use[s] corporate funds, moneys or credits” to make independent expenditures to register and report as PACs “for purposes of reporting such expenditures.” *See id.* §§ 2-10-132 and -105; *see also id.* § 2-10-102(12).

It is not entirely clear whether the PAC registration and reporting requirements only apply to reporting the expenditures, or whether the donor disclosure requirements for PACs also would apply (especially for non-profit corporations using donated funds).

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(b) Threshold for Donor Disclosure. If donor disclosure is required, the threshold for disclosure is any donor who has contributed more than \$100 during the reporting period. *See id.* §§ 2-10-107(a)(2) and 2-10-105.

There does not appear to be any allowance under which donors may avoid disclosure if they prohibit their donations from being used to fund IEs, or whereby disclosure may be limited to donors to a segregated account that is used to fund IEs.

V. DISCLAIMER REQUIREMENTS FOR INDEPENDENT EXPENDITURES AND ELECTIONEERING COMMUNICATIONS

(a) Form of Disclaimer. There are no particular form requirements for disclaimers. *See id.* § 2-19-120.

(b) Content of Disclaimer. The disclaimer must state who paid for the communication and also whether it is authorized by a candidate or candidate's committee. *Id.* § 2-19-120(a)(2) and (3).

(c) Types of Media Covered. The disclaimer requirement applies to any communications made "through any broadcasting station, newspaper, magazine, outdoor advertising facility, poster, yard sign, direct mailing or any other form of general public political advertising." *Id.* § 2-19-120(a).

(d) Exceptions. The disclaimer requirement does not apply to "bumper stickers, pins, buttons, pens, novelties, and similar small items upon which the disclaimer cannot be conveniently printed." *Id.* § 2-19-120(b).

VI. STATUTORY OR REGULATORY AUTHORITY FOR SUPER PACS

Tennessee law does not appear to explicitly provide for super PACs. However, there are no limits on corporate contributions to PACs. *See* Tenn. Code §§ 2-10-302 and 2-10-102.

(*See also* Tenn. Registry of Campaign Finance, Campaign Finance Guidelines for PACs at 7, *available* at <https://www.tn.gov/assets/entities/tref/attachments/PACCFDBooklet8x11.pdf>.)

VII. MAJOR/PRIMARY PURPOSE FOR PAC STATUS

Tennessee's PAC definition does not have any major or primary purpose limitation. *See id.* § 2-10-102(12).

VIII. PAC STATUS DETERMINATION AND THRESHOLDS

(a) PAC Definition. PAC status is triggered by "receiv[ing] contributions" or "mak[ing] expenditures." *Id.*

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(However, as discussed above in Section II, Tennessee has a very broad definition of “expenditure.”)

(b) Threshold for PAC Registration/Reporting. The threshold for registering and reporting as a PAC is “receiv[ing] contributions or mak[ing] expenditures . . . during a calendar quarter in an aggregate amount exceeding one thousand dollars (\$1,000).” *Id.* § 2-10-102(12)(C).

This threshold does not appear to be adjusted for inflation. *See id.*

(c) Threshold for Disclosure of PAC Donors. The threshold for disclosure is any donor who has contributed more than \$100 during the reporting period. *See id.* §§ 2-10-107(a)(2) and 2-10-105.

(d) Disclosure of Donors’ Employer Information on PAC Reports. Donors’ employer information is generally required, but when “best efforts have been used to obtain, maintain and submit the complete address, occupation, and employer required for contributors, the [report] shall be considered in compliance.” *Id.* § 2-10-107(a)(2).

IX. REGULATION OF “INCIDENTAL COMMITTEES”

Tennessee does not appear to regulate “incidental committees.”

(However, as discussed above in Sections II and VII, the requirement that all corporations making IEs register and report as PACs, and the lack of any major or primary purpose limitation on the PAC definition, essentially function as a regulation of “incidental committees.”)

X. PRIVATE ENFORCEMENT ACTIONS

Tennessee does not provide for private enforcement actions. The Tennessee Registry of Election Finance, the state Attorney General, county election commissions, and district attorneys appear to have sole responsibility for enforcement. *See id.* §§ 2-10-108, -109, -111, and -120.

XI. COORDINATION

(a) “Content Prong.” Coordination covers express advocacy, which, as discussed above in Section II, follows the *Buckley* standard. *Id.* § 2-10-132 and Tenn. Registry of Election Finance R. 0530-1-3-.07(2).

(b) Former Employee/Vendor “Conduct Prong.” The coordination rule does not specifically address former employees or vendors. *See* Tenn. Code § 2-10-132 and Tenn. Registry of Election Finance R. 0530-1-3-.07(4) and (5).

TENNESSEE

(c) **Public Information Exemption.** The coordination concept does not appear to specifically provide for a public information exemption. *See* Tenn. Code § 2-10-132 and Tenn. Registry of Election Finance R. 0530-1-3-.07(4).

XII. LOBBYING

(a) **General Lobbyist/Lobbyist Principal Donor Disclosure.** Donor disclosure does not appear to be required on lobbying registrations or reports. *See* Tenn. Code §§ 3-6-302(b) and -303.

(b) **Grassroots Lobbying.** Based on the statutory definition of lobbying, grassroots lobbying appears to be regulated in Tennessee.

To “lobby” means “to communicate, directly or *indirectly*, with any official in the legislative branch or executive branch for the purpose of influencing any legislative action or administrative action.” *Id.* § 3-6-301(15)(A)(emphasis added).

(IFS is aware, however, that while registered lobbyist employers are required to report grassroots lobbying expenditures, *see id.* § 3-6-303(a)(2), the Tennessee Ethics Commission has advised that an organization that is not otherwise an employer of registered state lobbyists does not trigger any lobbyist registration and reporting requirements solely by sponsoring grassroots lobbying activities. *See* Tenn. Ethics Comm’n, *In re Complaint of Michael Shor*, No. C 08-08 (Mar. 30, 2010).)

(c) **Forms of Grassroots Lobbying Communications Regulated.** If grassroots lobbying is regulated, there are no particular forms of lobbying communications that are regulated. *See* Tenn. Code § 3-6-301(15)(A).

(d) **Grassroots Lobbying Reference to Specific Legislation.** If grassroots lobbying is regulated, it does not appear that a reference to specific legislation is required for a communication to be regarded as lobbying. *See id.*

(e) **Grassroots Lobbying Registration and Reporting Thresholds.** If grassroots lobbying is regulated, there do not appear to be any thresholds for registration and reporting. *See id.* §§ 3-6-301(17), -302(a).

(f) **Donor Disclosure for Grassroots Lobbying.** As discussed above in XII(a), if grassroots lobbying is regulated, donor disclosure does not appear to be required on lobbying registrations or reports. *See id.* §§ 3-6-302(b) and -303.

(g) **Earmarked Donor Disclosure for Grassroots Lobbying.** N/A

(h) **Donor Disclosure Threshold for Grassroots Lobbying (If Not Limited to Earmarked Donors).** N/A

TENNESSEE

(i) Threshold Indexing (If Grassroots Lobbying Is Regulated). There are no thresholds, as discussed above in (e).

TEXAS

I. FALSE POLITICAL SPEECH LAW

Texas does not appear to have a false political speech law.

II. DEFINITION OF EXPENDITURE/EXPRESS ADVOCACY

Texas generally uses a *Buckley* express advocacy standard, but within 30 days before an election, it uses a *WRTL* express advocacy standard for certain communications that are targeted to the relevant electorate.

A “campaign expenditure” is defined as “an expenditure made by any person *in connection with a campaign* for an elective office or on a measure.” Tex. Elec. Code § 251.001(7); *see also id.* § 251.007(10) (defining “political expenditure” and (8) (defining “direct campaign expenditure”).

“In connection with a campaign” is defined, in relevant part, as an expenditure that is:

(i) made for a communication that expressly advocates the election or defeat of a clearly identified candidate by:

(I) using such words as “vote for,” “elect,” “support,” “vote against,” “defeat,” “reject,” “cast your ballot for,” or “Smith for city council,” or

(II) using such phrases as “elect the incumbent” or “reject the challenger,” or such phrases as “vote pro-life” or “vote pro-choice” accompanied by a listing of candidates described as “pro-life” or “pro-choice;”

(ii) made for a communication broadcast by radio, television, cable, or satellite or distributed by print or electronic media, including any print publication, mailing, Internet website, electronic mail, or automated phone bank, that:

(I) refers to a clearly identified candidate;

(II) is distributed within 30 days before a contested election for the office sought by the candidate;

(III) targets a mass audience or group in the geographical area the candidate seeks to represent; and

(IV) includes words, whether displayed, written, or spoken; images of the candidate or candidate’s opponent; or sounds of the voice of the candidate or candidate’s opponent that, without consideration of the intent of the person making the communication, are susceptible of no other reasonable interpretation than to urge the election or defeat of the candidate;

1 Tex. Admin. Code § 20.1(21)(A); *see also id.* § 20.1(21)(B) (defining “in connection with a campaign” for a ballot measure).

TEXAS

III. ELECTIONEERING COMMUNICATIONS

Texas does not appear to regulate electioneering communications.

IV. DONOR DISCLOSURE FOR INDEPENDENT EXPENDITURES MADE BY ENTITIES THAT ARE NOT PACS

Sponsors of IEs (known as “direct campaign expenditures” in Texas) exceeding \$100 that are not PACs are nonetheless required to report “as if the person were the campaign treasurer of a general-purpose committee [“GPAC”] that does not file monthly reports.” Tex. Elec. Code § 254.261; 1 Tex. Admin. Code § 22.6.

(a) Donor Disclosure. General donor disclosure appears to be required.

Direct campaign expenditure reports are required to disclose “the amount of political contributions from each person that in the aggregate exceed \$50” during the reporting period, and including “the full name and address of the person making the contributions.” Tex. Elec. Code §§ 254.261 and .031(a)(1).

Arguably, only donors of funds “that [are] offered or given with the intent that [they] be used in connection with a campaign for elective office or on a measure” should be required to be disclosed, but it is unclear if donor disclosure on direct campaign expenditure reports is, in fact, limited in such manner. *See id.* § 251.001(5) and (3) (defining “political contribution”).

(While IFS is aware of some organizations that have filed direct campaign expenditure reports without disclosing any donors, IFS is also aware that the Texas Ethics Commission has suggested that broader donor disclosure may be required on these reports. *See* Tex. Ethics Comm’n, Defendant’s Response to Mot. for Prelim. Injunction, *Catholic Leadership Coalition of Tex. v. Reisman*, No. 1:12-cv-00566 at 15 (W.D. Tex. filed Jul. 12, 2012).)

(b) Threshold for Donor Disclosure. Donors who have given contributions totaling more than \$50 during the reporting period are required to be disclosed. Tex. Elec. Code §§ 254.261 and .031(a)(1).

There does not appear to be any allowance under which donors may avoid disclosure if they prohibit their donations from being used to fund direct campaign expenditures, or whereby disclosure may be limited to donors to a segregated account that is used to fund direct campaign expenditures.

V. DISCLAIMER REQUIREMENTS FOR INDEPENDENT EXPENDITURES AND ELECTIONEERING COMMUNICATIONS

(a) Form of Disclaimer. There are no specific form requirements for disclaimers. *See id.* § 255.001 and 1 Tex. Admin. Code § 26.1.

TEXAS

(b) Content of Disclaimer. The disclaimer “must contain the words ‘political advertising’ or any recognizable abbreviation,” followed by the name of the sponsor. *Id.*

(c) Types of Media Covered. The disclaimer requirement applies to any communication that:

(A) in return for consideration, is published in a newspaper, magazine, or other periodical or is broadcast by radio or television; or

(B) appears:

(i) in a pamphlet, circular, flier, billboard or other sign, bumper sticker, or similar form of written communication; or

(ii) on an Internet website.

Id. and Tex. Elec. Code § 251.001(16) (defining “political advertising”).

(d) Exceptions. The disclaimer requirement does not apply to:

- (1) tickets or invitations to political fund-raising events;
- (2) campaign buttons, pins, hats, or similar campaign materials; or
- (3) circulars or flyers that cost in the aggregate less than \$500 to publish and distribute.

Tex. Elec. Code § 255.01(d).

Exceptions also exist for:

- “objects whose size makes printing the disclosure impractical,” 1 Tex. Admin. Code § 26.1(c);
- “an individual communication made by e-mail” provided, however, that disclaimers are required on “mass e-mails involving an expenditure of funds beyond the basic cost of hardware messaging software and bandwidth”; *id.* § 20.1(13)(B).
- a communication that is printed on letterhead and the letterhead identifies the sponsor of the communication, *id.* § 26.1(b).

VI. STATUTORY OR REGULATORY AUTHORITY FOR SUPER PACS

The Texas Ethics Commission’s regulations provide for super PACs (“direct campaign expenditure only committees”), which are permitted to accept unlimited contributions from corporations and unions. *See id.* § 22.5.

VII. MAJOR/PRIMARY PURPOSE FOR PAC STATUS

Texas defines a PAC with respect to whether political activity is “a principal purpose” of an organization. *See* Tex. Elec. Code § 251.001(12).

TEXAS

- “A group has as a principal purpose accepting political contributions if the proportion of the political contributions to the total contributions to the group is more than 25 percent within a calendar year.” 1 Tex. Admin. Code § 20.1(20)(B).
- “A group has as a principal purpose making political expenditures, including direct expenditures, if the group expends more than 25 percent of its annual expenses and other resources to make political expenditures within a calendar year.” *Id.* § 20.1(20)(C).

VIII. PAC STATUS DETERMINATION AND THRESHOLDS

(a) PAC Definition. The definition of a PAC is based on a group “accepting political contributions or making political expenditures.” Tex. Elec. Code § 251.001(12); *see also* 1 Tex. Admin. Code § 20.1 (defining “principal purpose”).

(b) Threshold for PAC Registration/Reporting. A PAC must register once it has accepted contributions or made expenditures totaling \$500. Tex. Elec. Code § 253.031(b).

This threshold does not appear to be adjusted for inflation. *See id.*

(c) Threshold for Disclosure of PAC Donors. Donors who give a total of more than \$50 during the reporting period are required to be disclosed. *Id.* § 254.031(a)(1).

(d) Disclosure of Donors’ Employer Information on PAC Reports. Donors’ employer information is not required on PAC reports. *See id.*

IX. REGULATION OF “INCIDENTAL COMMITTEES”

Texas does not appear to regulate “incidental committees” as such.

(However, as discussed above in Section IV, the requirement for sponsors of IEs to report “as if the person were” a PAC, as well as the low \$100 threshold for doing so, arguably could be seen as a form of regulation of “incidental committees.” On the other, also as discussed in Section IV, it is not entirely clear what this reporting requirement entails in practice.)

X. PRIVATE ENFORCEMENT ACTIONS

The Texas Ethics Commission, state Attorney General, and local district or county attorneys have primary responsibility for enforcing the state’s campaign finance laws. *See* Tex. Gov’t Code §§ 571.171 and Tex. Elec. Code §§ 273.001, .021, and .022. However, candidates also have a private cause of action against individuals or entities that make impermissible contributions or expenditures “in opposition” to the candidate, and corporations and unions that make prohibited contributions to a PAC are also liable to “to each political committee of opposing interest” to the PAC that receives such a prohibited contribution. *See* Tex. Elec. Code §§ 253.131 and .132.

TEXAS

XI. COORDINATION

(a) **“Content Prong.”** Coordination covers IEs (“campaign expenditures”). *See id.* §§ 251.001(8) and 254.261; 1 Tex. Admin. Code § 22.6. As discussed above in Section II, within 30 days before an election, Texas uses a *WRTL* standard to define a “campaign expenditure.” *See* 1 Tex. Admin. Code § 20.1(21).

(b) **Former Employee/Vendor “Conduct Prong.”** The coordination rule covers using the same vendors but does not limit this to contemporaneous sharing of vendors or otherwise specify a time limitation for when the use of the same vendors will be considered coordination. *See id.* § 22.6(b)(1) and (2).

(c) **Public Information Exemption.** The coordination rule does not appear to specifically provide for a public information exemption. *See id.* § 22.6 and Tex. Elec. Code §§ 251.001(8) and 254.261.

XII. LOBBYING

(a) **General Lobbyist/Lobbyist Principal Donor Disclosure.** Donor disclosure is required in some circumstances for lobbyist registration and is not necessarily limited to donations earmarked to fund lobbying.

Specifically, if a lobbyist is registered on behalf of “a business, trade, or consumer interest association but excluding a corporation,” the registration must disclose (or be continuously updated and amended to disclose) “a list of those persons making a grant or contribution, in addition to or instead of dues or fees, that exceeds \$250 per year.” Tex. Gov’t Code § 305.005(h)(4).

(IFS is aware that the Texas Ethics Commission appears to have interpreted this donor disclosure requirement to apply only to an “unincorporated entity.” *See* Tex. Ethics Comm’n Form REG Sched. A Part 3(a), *available at* <https://www.ethics.state.tx.us/forms/reg16.pdf>; *compare id.* with *id.* Sched. A Part 3(b). IFS has also been advised by counsel at the agency that “[t]rade associations that incorporate are corporations and are excluded from providing the [donor] information” on the lobbyist registration form.)

(b) **Grassroots Lobbying.** Grassroots lobbying is generally not regulated in Texas in that it will not trigger separate registration if a group only engages in grassroots lobbying.

Lobbying is defined by reference to efforts to “*communicate directly* with one or more members of the legislative or executive branch to influence legislation or administrative action.” Tex. Gov’t Code § 305.003(a)(1) (emphasis added).

(This understanding is confirmed by Tex. Ethics Comm’n Adv. Op. No. 85 (Nov. 5, 1992) and Tex. Ethics Comm’n, Lobbying in Texas (rev. Sept. 15, 2015), *available at* http://www.ethics.state.tx.us/guides/LOBBY_guide.htm.)

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Nonetheless, persons already registered as a lobbyist must report certain grassroots expenditures for mass media. *See* Tex. Gov't Code § 305.006(c).

(c) Forms of Grassroots Lobbying Communications Regulated. If a person is already registered as a lobbyist, the lobbyist must report expenditures made by the lobbyist or by those working on the lobbyist's behalf "for broadcast or print advertisements, direct mailings, and other mass media communications if: (1) the communications are made to a person other than a member, employee, or stockholder of [a principal]; and (2) the communications support or oppose or encourage another to support or oppose pending legislation or administrative action." Tex. Gov't Code § 305.006(c).

(d) Grassroots Lobbying Reference to Specific Legislation. It appears that a reference to specific legislation is required for a communication to be reportable as a lobbying expenditure. *See id.*

(e) Grassroots Lobbying Registration and Reporting Thresholds. N/A

(f) Donor Disclosure for Grassroots Lobbying. N/A

(g) Earmarked Donor Disclosure for Grassroots Lobbying. N/A

(h) Donor Disclosure Threshold for Grassroots Lobbying (If Not Limited to Earmarked Donors). N/A

(i) Threshold Indexing (If Grassroots Lobbying Is Regulated). N/A

UTAH

I. FALSE POLITICAL SPEECH LAW

In Utah, “[a] person may not knowingly make or publish, or cause to be made or published, any false statement in relation to any candidate, proposed constitutional amendment, or other measure, that is intended or tends to affect any voting at any primary, convention, or election.” Utah Code § 20A-11-1103.

II. DEFINITION OF EXPENDITURE/EXPRESS ADVOCACY

Utah has a very broad and vague statutory definition of “expenditure” and does not define its “express advocacy” standard.

An “expenditure” is generally any payment or “anything of value *made for political purposes*.” *Id.* § 20A-11-101(15)(a)(ii) and (iii) (emphasis added).

“Political purposes” is defined as “an act done *with the intent or in a way to influence or tend to influence*, directly or indirectly, any person to refrain from voting or to vote for or against any: (a) candidate or a person seeking a municipal or county office at any caucus, political convention, or election; or (b) judge standing for retention at any election.” *Id.* § 20A-11-101(40) (emphasis added).

An “independent expenditure” is defined in terms of an “expenditure by a person expressly advocating the success or defeat of a clearly identified candidate or ballot proposition.” *Id.* § 20A-11-1702(2)(a); *see also id.* §§ 20A-11-101(8)(a) (defining “corporation” with reference to express advocacy) and 20A-11-701 (corporate expenditures reporting requirement), 20A-11-101(34)(a) (defining a PAC in terms of making “expenditures to expressly advocate”).

The term “express advocacy” (or any of its grammatical variants) is not defined, and thus it is unclear what is supposed to be regulated as such under the statute.

III. ELECTIONEERING COMMUNICATIONS

(a) Regulation of ECs. Utah regulates “electioneering communications.” *See id.* § 20A-11-101(14).

(b) What Content Triggers Regulation as an Electioneering Communication. A communication is regulated as an EC if it:

- (a) has at least a value of \$10,000;
- (b) clearly identifies a candidate or judge; and
- (c) is disseminated through the Internet, newspaper, magazine, outdoor advertising facility, direct mailing, broadcast, cable, or satellite provider within 45 days of the clearly identified candidate's or judge's election date.

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Id.

(c) Types of Media Covered. ECs include communications “disseminated through the Internet, newspaper, magazine, outdoor advertising facility, direct mailing, broadcast, cable, or satellite provider.” *Id.*

(d) Reporting Threshold. The threshold for reporting is making an EC having “at least a value of \$10,000.” *Id.*; *see also id.* § 20A-11-901(2)(a).

(This threshold does not appear to be indexed for inflation. Also, although it is not entirely clear, this threshold also does not appear to be cumulative. In other words, if someone were to sponsor 5 separate ECs each having a value of \$2,000, arguably, the EC reporting requirement would not be triggered.)

(e) Time Windows. The time windows for regulating ECs in Utah go beyond the federal 30/60-day pre-election windows. *See id.* § 20A-11-101(14)(c).

(f) Jurisdictional Limitation. There does not appear to be any jurisdictional limitation to the definition of an EC. *See id.* § 20A-11-101(14).

(g) Donor Disclosure. EC reports are required to disclose “the name and address of each person contributing at least \$100 to the [sponsor] *for the purpose of disseminating the electioneering communication.*” *Id.* § 20A-11-901(2)(b)(ii) (emphasis added).

(h) 501(c)(3) Exemption. There is no specific 501(c)(3) exemption in the electioneering communications law. *See id.* §§ 20A-11-901(2) and -101(14).

(i) Media Exemption. There is no media exemption. *See id.*

(j) Other Exemptions. There are no other exemptions. *See id.*

IV. DONOR DISCLOSURE FOR INDEPENDENT EXPENDITURES MADE BY ENTITIES THAT ARE NOT PACS

(a) Donor Disclosure. IE reports are required to disclose “each person who, *for political purposes*, made cumulative donations of \$1,000 or more during the current election cycle to the filer of the independent expenditure report.” *Id.* § 20A-11-1704(3)(c)(vi) (emphasis added).

As discussed above in Section II, “political purposes” is defined as “an act done *with the intent or in a way to influence or tend to influence*, directly or indirectly, any person to refrain from voting or to vote for or against any: (a) candidate or a person seeking a municipal or county office at any caucus, political convention, or election; or (b) judge standing for retention at any election.” *Id.* § 20A-11-101(40) (emphasis added).

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Thus, donor disclosure is limited to some form of earmarked donations, but the standard for determining which donations are considered to be for “political purposes” is vague.

(b) Threshold for Donor Disclosure. Donors who have given funds totaling \$1,000 or more “during the current election cycle” are required to be disclosed. *Id.* § 20A-11-1704(3)(c)(vi).

There does not appear to be any allowance under which donors may avoid disclosure if they prohibit their donations from being used to fund IEs, or whereby disclosure may be limited to donors to a segregated account that is used to fund IEs.

V. DISCLAIMER REQUIREMENTS FOR INDEPENDENT EXPENDITURES AND ELECTIONEERING COMMUNICATIONS

Note: Utah’s disclaimer requirements appear to apply only to express advocacy communications. *See id.* § 20A-11-901(1); *compare id.* with *id.* § 20A-11-901(2).

(a) Form of Disclaimer. There are no specific form requirements for disclaimers. *See id.* § 20A-11-901(1).

(b) Content of Disclaimer. The disclaimer must “clearly state the name of the person who paid for the advertisement and state that the advertisement is not authorized by any candidate or candidate's committee.” *Id.* § 20A-11-901(1)(a)(iii).

(c) Types of Media Covered. The disclaimer requirement applies to communications made “through any broadcasting station, newspaper, magazine, outdoor advertising facility, direct mailing, or any other type of general public political advertising.” *Id.* § 20A-11-901(1)(a).

(d) Exceptions. The disclaimer requirement does not apply to:

- (i) lawn signs with dimensions of four by eight feet or smaller;
- (ii) bumper stickers;
- (iii) campaign pins, buttons, and pens; and
- (iv) similar small items upon which the disclaimer cannot be conveniently printed.

Id. § 20A-11-901(1)(b).

VI. STATUTORY OR REGULATORY AUTHORITY FOR SUPER PACS

Although Utah’s statute does not appear to provide specifically for super PACs, Utah does not have any contribution source prohibitions or limits.

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VII. MAJOR/PRIMARY PURPOSE FOR PAC STATUS

Utah defines a PAC with respect to whether political activity is “a major purpose” of an organization. *See id.* § 20A-11-101(34)(a) (emphasis added).

VIII. PAC STATUS DETERMINATION AND THRESHOLDS

(a) PAC Definition. The definition of a PAC is based on whether a group:

(i) solicit[s] or receive[s] contributions from any other person, group, or entity for political purposes; or

(ii) make[s] expenditures to expressly advocate for any person to refrain from voting or to vote for or against any candidate or person seeking election to a municipal or county office.

Id. § 20A-11-101(34)(a); *see also id.* § 20A-11-101(37)(a) (defining “political issues committee”).

(As discussed above in Section II, however, the terms “expenditures” and “political purposes” are not precisely defined, and the term “expressly advocate” is not defined at all.)

(b) Threshold for PAC Registration/Reporting. A PAC must register if it makes expenditures totaling at least \$50 or receives contributions of at least \$750 in a calendar year. *Id.* §§ 20A-11-601(1) and -602(1).

These thresholds do not appear to be adjusted for inflation. *See id.*

(c) Threshold for Disclosure of PAC Donors. Donors who give a total of more than \$50 are required to be disclosed. *Id.* § 20A-11-602(2)(a)(i) and (b). It is not entirely clear over what time period the \$50 threshold applies.

(d) Disclosure of Donors’ Employer Information on PAC Reports. Donors’ employer information is not required on PAC reports. *See id.* § 20A-11-602(2)(a)(i).

IX. REGULATION OF “INCIDENTAL COMMITTEES”

Utah does not appear to regulate “incidental committees” as such.

(However, the Utah statute requires periodic reporting (including donor disclosure) by corporations that have “made expenditures for political purposes” totaling at least \$750 during a calendar year. *See* Utah Code §§ 20A-11-701 and -702. This arguably functions as a regulation of “incidental committees.” Under a consent decree, this requirement was limited to PACs/PICs “for which [political] advocacy is their major purpose.” *Utah Taxpayers Assoc. v. Cox*, Case No. 2:15-cv-0805-DAK (D. Utah), Consent Decree filed Jul. 14, 2016.)

UTAH

X. PRIVATE ENFORCEMENT ACTIONS

The Lieutenant Governor and state Attorney General are responsible for enforcement of the campaign finance laws (registered voters may file a “verified petition” asking the Lieutenant Governor or Attorney General to investigate and prosecute violations). Utah Code § 20A-1-801 *et seq.*

XI. COORDINATION

(a) **“Content Prong.”** Coordination covers an “expenditure by a person expressly advocating the success or defeat of a clearly identified candidate or ballot proposition.” *See id.* § 20A-11-1702(2)(a). As discussed above in Section II, the Utah statute does not define what “expressly advocating” means.

(b) **Former Employee/Vendor “Conduct Prong.”** The coordination rule does not address former employees or vendors. *See id.*

(c) **Public Information Exemption.** The coordination rule does not appear to specifically provide for a public information exemption. *See id.*

XII. LOBBYING

(a) **General Lobbyist/Lobbyist Principal Donor Disclosure.** Donor disclosure does not appear to be required on lobbying registrations or reports. *See id.* §§ 36-11-103(1)(c) and -201.

(b) **Grassroots Lobbying.** Grassroots lobbying is not regulated in Utah.

Lobbying is defined as “communicating with a public official for the purpose of influencing the passage, defeat, amendment, or postponement of legislative or executive action.” *Id.* § 36-11-102(13).

(IFS has confirmed this understanding with the Lieutenant Governor’s office.)

(c) **Forms of Grassroots Lobbying Communications Regulated.** N/A

(d) **Grassroots Lobbying Reference to Specific Legislation.** N/A

(e) **Grassroots Lobbying Registration and Reporting Thresholds.** N/A

(f) **Donor Disclosure for Grassroots Lobbying.** N/A

(g) **Earmarked Donor Disclosure for Grassroots Lobbying.** N/A

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(h) Donor Disclosure Threshold for Grassroots Lobbying (If Not Limited to Earmarked Donors). N/A

(i) Threshold Indexing (If Grassroots Lobbying Is Regulated). N/A

VERMONT

I. FALSE POLITICAL SPEECH LAW

Vermont does not appear to have a false political speech law.

II. DEFINITION OF EXPENDITURE/EXPRESS ADVOCACY

An “expenditure” is defined, in relevant part, as “a payment, disbursement, distribution, advance, deposit, loan, or gift of money or anything of value, paid or promised to be paid, *for the purpose of influencing an election, advocating a position on a public question, or supporting or opposing one or more candidates.*” 17 Vt. Stat. § 2901(7) (emphasis added).

III. ELECTIONEERING COMMUNICATIONS

(a) Regulation of ECs. Vermont imposes disclaimer requirements on “electioneering communications” and reporting requirements on “mass media activity.” *See id.* § 2901(6) and (11).

(b) What Content Triggers Regulation as an Electioneering Communication. A communication is regulated as an EC if it “*refers to a clearly identified candidate for office and . . . promotes or supports a candidate for that office or attacks or opposes a candidate for that office*, regardless of whether the communication expressly advocates a vote for or against a candidate.” *Id.* § 2901(6).

A communication is regulated as “mass media activity” if it is “a television commercial, radio commercial, mass mailing, mass electronic or digital communication, literature drop, newspaper or periodical advertisement, robotic phone call, or telephone bank, *which includes the name or likeness of a clearly identified candidate for office.*” *Id.* § 2901(11) (emphasis added).

(c) Types of Media Covered. ECs “includ[e],” but do not appear to be limited to:

communications published in any newspaper or periodical or broadcast on radio or television or over the Internet or any public address system; placed on any billboards, outdoor facilities, buttons, or printed material attached to motor vehicles, window displays, posters, cards, pamphlets, leaflets, flyers, or other circulars; or contained in any direct mailing, robotic phone calls, or mass e-mails.

Id. § 2901(6).

(d) Reporting Threshold. The threshold for reporting “mass media activity” is making expenditures for such activity totaling \$500 or more within 45 days before an election. *Id.* § 2971.

(This threshold is indexed for inflation. *See id.* At this time, it appears that the threshold is still the statutory amount of \$500. *See* Vt. Sec’y of State, Guide to Vermont’s Campaign

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Finance Law (rev. Jan. 2016) at 7, available at <https://www.sec.state.vt.us/media/732986/2016-Campaign-Finance-Guide.pdf>.)

(e) Time Windows. The time windows for regulating ECs (year-round) and “mass media activities” (45 days before an election) in Vermont go beyond the federal 30/60-day pre-election windows. *See id.* §§ 2901(6) and (11) and 2971.

(f) Jurisdictional Limitation. There does not appear to be any jurisdictional limitation to the definition of an EC or “mass media activity.” *See id.*

(g) Donor Disclosure. “Mass media activity” reports do not appear to require any donor disclosure except for reports filed by independent expenditure-only committees. *See id.* § 2971.

(h) 501(c)(3) Exemption. There is no specific 501(c)(3) exemption in the electioneering communications for “mass media activity” laws. *See id.* §§ 2901(6) and (11) and 2971.

(i) Media Exemption. There is no media exemption. *See id.*

(j) Other Exemptions. The EC disclaimer requirements do not apply to “lapel stickers or buttons, nor shall they apply to electioneering communications made by a single individual acting alone who spends, in a single two-year general election cycle, a cumulative amount of no more than \$150.00 on those electioneering communications.” *See id.* § 2972(d).

IV. DONOR DISCLOSURE FOR INDEPENDENT EXPENDITURES MADE BY ENTITIES THAT ARE NOT PACS

Vermont does not appear to require separate reporting for IEs other than the “mass media activity” reports discussed above in Section III. As discussed in Section III(g), these reports do not appear to require donor disclosure for groups that are not PACs. *See id.* § 2971.

V. DISCLAIMER REQUIREMENTS FOR INDEPENDENT EXPENDITURES AND ELECTIONEERING COMMUNICATIONS

(a) Form of Disclaimer. There are no specific form requirements for EC disclaimers, but ECs in the form of radio, TV, or online video communications must include additional audio content in the disclaimer. *See id.* §§ 2972 and 2973.

(b) Content of Disclaimer. In general, the disclaimer for ECs must state the name and mailing address of the sponsor. *Id.* § 2972(a). If an EC is in the form of a radio, television, or online video communication, the sponsor also must include “in a clearly spoken manner, an audio statement of the name and title of the person who paid for the communication, and that the person paid for the communication.” *Id.* § 2973(a). If the sponsor is an organization, the audio statement must include both the name of the sponsor and the name and title of “the principal officer” of the organization (although it does not appear that the officer is required to read the disclaimer himself or herself). *Id.* § 2973(b).

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(c) Types of Media Covered. As discussed above in Section III(c), the ECs to which the disclaimer requirement applies “includ[e],” but do not appear to be limited to:

communications published in any newspaper or periodical or broadcast on radio or television or over the Internet or any public address system; placed on any billboards, outdoor facilities, buttons, or printed material attached to motor vehicles, window displays, posters, cards, pamphlets, leaflets, flyers, or other circulars; or contained in any direct mailing, robotic phone calls, or mass e-mails.

Id. § 2901(6).

(d) Exceptions. As discussed above in Section III(j), the EC disclaimer requirement does not apply to “lapel stickers or buttons, nor shall they apply to electioneering communications made by a single individual acting alone who spends, in a single two-year general election cycle, a cumulative amount of no more than \$150.00 on those electioneering communications.” *See id.* § 2972(d).

VI. STATUTORY OR REGULATORY AUTHORITY FOR SUPER PACS

Vermont’s statute defines “independent expenditure-only committees.” *See id.* § 2901(10). However, the statute does not appear to exempt IEOCs from the contribution limits applicable to PACs. *See id.* § 2941.

(The Secretary of State’s campaign finance guide states that IEOCs are not subject to limits on the amounts they may accept in contributions but does not cite any statutory authority for this proposition. *See* Vt. Sec’y of State, Guide to Vermont’s Campaign Finance Law (rev. Jan. 2016) at 9.)

VII. MAJOR/PRIMARY PURPOSE FOR PAC STATUS

Vermont’s PAC definition does not have any “major” or “primary purpose” limitation. *See* 17 Vt. Stat. § 2901(13).

VIII. PAC STATUS DETERMINATION AND THRESHOLDS

(a) PAC Definition. Vermont defines a “political committee,” in relevant part, as:

any formal or informal committee of two or more individuals or a corporation, labor organization, public interest group, or other entity, not including a political party, *which accepts contributions of \$1,000.00 or more and makes expenditures of \$1,000.00 or more* in any two-year general election cycle for the purpose of supporting or opposing one or more candidates, influencing an election, or advocating a position on a public question in any election

Id. (emphasis added).

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(As discussed above in Section II, however, the definition of an expenditure” is very broad and vague. The term “contribution” is similarly defined. *See id.* § 2901(4).)

(b) Threshold for PAC Registration/Reporting. A PAC must register if it “accepts contributions of \$1,000.00 or more and makes expenditures of \$1,000.00 or more in any two-year general election cycle.” *Id.* § 2901(13).

This threshold does not appear to be adjusted for inflation. *Compare id.* with *id.* §§ 2986, 2943, 2971, 2906, 2905, and 2972.

(c) Threshold for Disclosure of PAC Donors. “[E]ach contributor who contributes an amount in excess of \$100.00” must be disclosed. *Id.* § 2963(a)(1). It is not entirely clear over what time period the \$100 threshold applies.

(The Secretary of State’s guidance specifies that the \$100 disclosure threshold applies over the course of “a general election cycle.” Vt. Sec’y of State, Guide to Vermont’s Campaign Finance Law (rev. Jan. 2016) at 11.)

(d) Disclosure of Donors’ Employer Information on PAC Reports. Donors’ employer information is not required on PAC reports. *See* 17 Vt. Stat. § 2963(a)(1).

IX. REGULATION OF “INCIDENTAL COMMITTEES”

Vermont does not appear to regulate “incidental committees.”

X. PRIVATE ENFORCEMENT ACTIONS

The state Attorney General and State’s Attorneys are responsible for enforcement of the campaign finance laws. *Id.* §§ 2903 and 2904. (*See also* Vt. Sec’y of State Guide to Vermont’s Campaign Finance Law (rev. Jan. 2016) at 12. The Vermont State Ethics Commission may accept complaints alleging violations of the state campaign finance laws but must refer such complaints to the state Attorney General or States’ Attorneys. 3 Vt. Stat. § 1223(b)(3).)

XI. COORDINATION

(a) “Content Prong.” Coordinated expenditures are known as “related campaign expenditures” in Vermont. *See* 17 Vt. Stat. § 2944. A “related campaign expenditure” is defined as “any expenditure intended to promote the election of a specific candidate or group of candidates or the defeat of an opposing candidate or group of candidates if intentionally facilitated by, solicited by, or approved by the candidate or the candidate’s committee.” *Id.* § 2944(b).

As discussed above in Section II, Vermont’s definition of an “expenditure” is very broad and vague. *See id.* § 2901(7).

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(b) Former Employee/Vendor “Conduct Prong.” The coordination rule does not address former employees or vendors. *See id.* § 2944 and Vt. Sec’y of State Admin. R. 2000-1.

(c) Public Information Exemption. The coordination rule does not appear to specifically provide for a public information exemption. *See id.*

XII. LOBBYING

(a) General Lobbyist/Lobbyist Principal Donor Disclosure. Donor disclosure does not appear to be required on lobbying registrations or reports. *See* 2 Vt. Stat. §§ 263(c) and (d), 264(b) and (c), and 264b(b).

(b) Grassroots Lobbying. Grassroots lobbying is regulated in Vermont.

Lobbying is defined as:

(a) to communicate orally or in writing with any legislator or administrative official for the purpose of influencing legislative or administrative action;

(b) *solicitation of others* to influence legislative or administrative action;

(c) an attempt to obtain the goodwill of a legislator or administrative official by communications or activities with that legislator or administrative official intended ultimately to influence legislative or administrative action; or

(d) activities sponsored by an employer or lobbyist on behalf of or for the benefit of the members of an interest group, if a principal purpose of the activity is to enable such members to communicate orally with one or more legislators or administrative officials for the purpose of influencing legislative or administrative action or to obtain their goodwill.

Vt. Stat. tit. 2, § 261(9) (emphasis added).

(IFS has confirmed this understanding with the Secretary of State’s office.)

(c) Forms of Grassroots Lobbying Communications Regulated. There are no particular forms of communications that are regulated as grassroots lobbying. *See id.*

(d) Grassroots Lobbying Reference to Specific Legislation. The definition of lobbying is broad and does not appear to require a reference to specific legislation to qualify as lobbying. *See id.*

(e) Grassroots Lobbying Registration and Reporting Thresholds. Any person that receives or spends more than \$500 on lobbying in any calendar year is required to register and report as a lobbyist. *Id.* § 261(10).

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(f) Donor Disclosure for Grassroots Lobbying. As discussed above in Section XII(a), donor disclosure does not appear to be required on lobbyist registrations and reports. *See* 2 Vt. Stat. §§ 263(c) and (d), 264(b) and (c), and 264b(b).

(g) Earmarked Donor Disclosure for Grassroots Lobbying. N/A

(h) Donor Disclosure Threshold for Grassroots Lobbying (If Not Limited to Earmarked Donors). N/A

(i) Threshold Indexing (If Grassroots Lobbying Is Regulated). The \$500 threshold for registration and reporting does not appear to be indexed for inflation. *See id.* § 261(10).

VIRGINIA

I. FALSE POLITICAL SPEECH LAW

Virginia does not appear to have a false political speech law.

II. DEFINITION OF EXPENDITURE/EXPRESS ADVOCACY

An “expenditure” is defined, in relevant part, as “money and services of any amount, and any other thing of value, paid, loaned, provided, or in any other way disbursed by any candidate, campaign committee, political committee, or person *for the purpose of expressly advocating* the election or defeat of a clearly identified candidate.” Va. Code § 24.2-945.1 (emphasis added).

“Express advocacy” (or any of its grammatical variants) is not defined.

III. ELECTIONEERING COMMUNICATIONS

(a) Regulation of ECs. Virginia does not regulate ECs *per se*, but it imposes special disclaimer requirements on certain telephone calls made within certain pre-election time windows that refer to candidates and political parties. *See id.* §§ 24.2-955.1 and -959.1.

(b) What Content Triggers Regulation as an Electioneering Communication. A regulated “campaign telephone call” is:

a series of telephone calls, electronic or otherwise, made (i) to 25 or more telephone numbers in the Commonwealth, (ii) during the 180 days before a general or special election or during the 90 days before a primary or other political party nominating event, (iii) *conveying or soliciting information relating to any candidate or political party participating in the election, primary or other nominating event*, and (iv) under an agreement to compensate the telephone callers.

Id. § 24.2-955.1 (emphasis added).

(c) Types of Media Covered. Regulated “campaign telephone calls” apply to paid calls. *See id.*

(d) Reporting Threshold. There is no reporting, but the threshold for regulation is making paid calls (there is no dollar threshold) to at least 25 telephone numbers in the state. *See id.*

(e) Time Windows. The time windows for when “campaign telephone calls” are regulated are within 180 days before a general or special election or within 90 days before a primary or other political party nominating event. *See id.*

(f) Jurisdictional Limitation. There is no jurisdictional limitation to the definition of a “campaign telephone call,” other than that there must be at least 25 calls made to phone numbers in the state. *See id.*

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(g) **Donor Disclosure.** There is no donor disclosure required in the disclaimers for “campaign telephone calls.” *See id.* § 959.1.

(h) **501(c)(3) Exemption.** There is no specific 501(c)(3) exemption in the requirements for “campaign telephone calls.” *See id.* §§ 24.2-955.1 and -959.1.

(i) **Media Exemption.** There is no media exemption. *See id.*

(j) **Other Exemptions.** There are no other exemptions. *See id.*

IV. **DONOR DISCLOSURE FOR INDEPENDENT EXPENDITURES MADE BY ENTITIES THAT ARE NOT PACS**

The Virginia statute is not clear about what information is required on IE reports filed by entities that are not PACs but does not specifically require donor disclosure on such reports. *See id.* § 24.2-945.2.

(In practice, the Virginia Department of Elections IE reporting form also does not require donor disclosure. *See* Va. Dept. of Elections, Ind. Expenditure Rept. (rev. Apr. 11, 2014), at

<http://www.elections.virginia.gov/Files/Forms/CampaignFinance/Candidate/2014IndependentExpenditureReport.pdf>.)

V. **DISCLAIMER REQUIREMENTS FOR INDEPENDENT EXPENDITURES AND ELECTIONEERING COMMUNICATIONS**

(a) **Form of Disclaimer.** IEs that are television advertisements must have “spoken” disclaimers. *See id.* § 24.2-957.3. The other disclaimer requirements are not specific as to form, or the form requirements are specific to the types of media used. *See id.* §§ 24.2-956.1, -958.3, and -959.1.

(b) **Content of Disclaimer.**

- For print ads: The disclaimer must state, “Paid for by [name of sponsor. Not authorized by a candidate.” *Id.* § 24.2-956.1
- For TV and radio ads: The disclaimer must state, “I am [name], and I sponsored this ad.” If the sponsor is a corporation or other entity, the entity’s CEO must read the disclaimer and state, “[Sponsor] paid for [or ‘sponsored’ or ‘furnished’] this ad.” *Id.* §§ 24.2-957.3 and -958.3.
- For “campaign telephone calls” (discussed in Section III above): The disclaimer must state “the full name and residence address of the individual responsible for the campaign telephone calls.” *Id.* § 959.1.

(c) **Types of Media Covered.** The disclaimer requirements apply to “print media advertisements,” “television advertisements,” “radio advertisements,” and paid telephone calls. *Id.* §§ 24.2-956.1, 957.3, -958.3, -955.1, and -959.1.

VIRGINIA

“Print media” are defined as “billboards, cards, newspapers, newspaper inserts, magazines, printed material disseminated through the mail, pamphlets, fliers, bumper stickers, periodicals, website, electronic mail, yard signs, and outdoor advertising facilities.” *Id.* § 24.2-955.1.

(d) Exceptions. For any “print media advertisement appearing in electronic format” where there is insufficient space for the disclaimer, the required disclaimer information may be displayed on a “landing page or a home page” that is linked to in the electronic ad. *See id.* § 24.2-956.1(6). Otherwise, there are generally no exceptions to the disclaimer requirements. *See id.* §§ 24.2-956.1, 957.3, -958.3, -955.1, and -959.1.

VI. STATUTORY OR REGULATORY AUTHORITY FOR SUPER PACS

Virginia’s statute does not appear to provide specifically for super PACs. However, Virginia PACs are not subject to any source prohibitions or amount limitations on the contributions they may receive.

VII. MAJOR/PRIMARY PURPOSE FOR PAC STATUS

A “political action committee” is defined, in relevant part, as “any organization, person, or group of persons, established or maintained to receive and expend contributions for *the primary purpose* of expressly advocating the election or defeat of a clearly identified candidate.” *Id.* § 24.2-945.1 (emphasis added).

VIII. PAC STATUS DETERMINATION AND THRESHOLDS

(a) PAC Definition. PAC status is triggered by receiving “contributions” and making “expend[itures]” from those contributions. *Id.*

(As discussed above in Section II, however, “express advocacy” – which is central to the definition of an “expenditure” – is not defined. The term “contribution” is similarly defined in reference to “express advocacy.” *See id.*)

(b) Threshold for PAC Registration/Reporting. A PAC must register upon “receiving contributions or making expenditures in excess of \$200 in a calendar year.” *Id.* § 24.2-949.2(A).

This threshold does not appear to be adjusted for inflation. *See id.*

(c) Threshold for Disclosure of PAC Donors. Disclosure is required for “each contributor who has contributed an aggregate of more than \$100” during the reporting period. *Id.* § 24.2-949.5(B)(2).

(d) Disclosure of Donors’ Employer Information on PAC Reports. Donors’ employer information is required on PAC reports. *Id.* § 24.2-949.5(B)(2)(g).

VIRGINIA

IX. REGULATION OF “INCIDENTAL COMMITTEES”

Virginia does not appear to regulate “incidental committees.”

X. PRIVATE ENFORCEMENT ACTIONS

The State Department of Elections, local election registrars, and Commonwealth’s Attorneys are responsible for enforcement of the campaign finance laws. *Id.* § 24.2-946.3.

XI. COORDINATION

(a) “Content Prong.” Virginia’s coordination law applies to “expenditures.” *See id.* § 24.2-945.1. As discussed above in Section II, Virginia defines an “expenditure” with reference to “express advocacy,” and “express advocacy” is not defined. *See id.*

(b) Former Employee/Vendor “Conduct Prong.” The coordination rule does not address former employees or vendors. *See id.*

(c) Public Information Exemption. The coordination rule does not appear to specifically provide for a public information exemption. *See id.*

XII. LOBBYING

(a) General Lobbyist/Lobbyist Principal Donor Disclosure. Donor disclosure does not appear to be required on lobbying registrations or reports. *See id.* §§ 2.2-423(A) and - 426(C).

(b) Grassroots Lobbying. Grassroots lobbying appears to be regulated in Virginia.

Lobbying is defined as: “[i]nfluencing or attempting to influence executive or legislative action through oral or written communication with an executive or legislative official” or the “[s]olicitation of others to influence an executive or legislative official.” Va. Code § 2.2-419 (emphasis added).

(The Secretary of the Commonwealth’s office has declined to confirm this understanding with IFS.)

(c) Forms of Grassroots Lobbying Communications Regulated. There are no particular forms of communications that are regulated as grassroots lobbying. *See id.*

(However, communications between an association and its members are exempt from the definition of lobbying. *See id.*)

(d) Grassroots Lobbying Reference to Specific Legislation. The definition of lobbying is broad and does not appear to require a reference to specific legislation to qualify as lobbying. *See id.*

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(e) Grassroots Lobbying Registration and Reporting Thresholds. Any person that receives or spends more than \$500 on lobbying in any calendar year is required to register and report as a lobbyist. *Id.* § 2.2-420.

(f) Donor Disclosure for Grassroots Lobbying. As discussed above in Section XII(a), donor disclosure does not appear to be required on lobbyist registrations and reports. *See id.* §§ 2.2-423(A) and -426(C).

(g) Earmarked Donor Disclosure for Grassroots Lobbying. N/A

(h) Donor Disclosure Threshold for Grassroots Lobbying (If Not Limited to Earmarked Donors). N/A

(i) Threshold Indexing (If Grassroots Lobbying Is Regulated). The \$500 threshold for registration and reporting does not appear to be indexed for inflation. *See id.* § 2.2-420.

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Note: Unless otherwise indicated, all citations below to the Washington Revised Code are to the statutory provisions as they were designated as of April 2018. Some of the cited provisions may be redesignated as a result of the enactment of 2018 H.B. 2938 (effective June 6, 2018), and may be further redesignated as a result of the enactment of 2018 S.B. 5991 (effective January 1, 2019).

I. FALSE POLITICAL SPEECH LAW

Washington has a false political speech law. *See* Wash. Rev. Code § 42.17A.335.

In Washington:

(1) It is a violation of this chapter for a person to sponsor with actual malice a statement constituting libel or defamation per se under the following circumstances:

(a) Political advertising or an electioneering communication that contains a false statement of material fact about a candidate for public office;

(b) Political advertising or an electioneering communication that falsely represents that a candidate is the incumbent for the office sought when in fact the candidate is not the incumbent;

(c) Political advertising or an electioneering communication that makes either directly or indirectly, a false claim stating or implying the support or endorsement of any person or organization when in fact the candidate does not have such support or endorsement.

(2) For the purposes of this section, “libel or defamation per se” means statements that tend (a) to expose a living person to hatred, contempt, ridicule, or obloquy, or to deprive him or her of the benefit of public confidence or social intercourse, or to injure him or her in his or her business or occupation, or (b) to injure any person, corporation, or association in his, her, or its business or occupation.

Id.

(This provision was formerly codified at *id.* § 42.17.530(1) and was held unconstitutional by the Washington Supreme Court in *Rickert v. Pub. Disc. Comm’n*, 168 P.3d 826 (Wash. 2007). Nonetheless, it was recodified in 2012.)

II. DEFINITION OF EXPENDITURE/EXPRESS ADVOCACY

Washington has broad definitions of an “expenditure” and “independent expenditure.”

An “expenditure” “includes a payment, contribution, subscription, distribution, loan, advance, deposit, or gift of money or anything of value, and includes a contract, promise, or agreement, whether or not legally enforceable, to make an expenditure.” Wash. Rev. Code § 42.17A.005(20).

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An “independent expenditure” means an expenditure that has each of the following elements:

(i) It is made *in support of or in opposition to* a candidate for office by a person who is not (A) A candidate for that office, (B) An authorized committee of that candidate for that office, and (C) A person who has received the candidate's encouragement or approval to make the expenditure, if the expenditure pays in whole or in part for political advertising supporting that candidate or promoting the defeat of any other candidate or candidates for that office;

(ii) It is made *in support of or in opposition to* a candidate for office by a person with whom the candidate has not collaborated for the purpose of making the expenditure, if the expenditure pays in whole or in part for political advertising supporting that candidate or promoting the defeat of any other candidate or candidates for that office;

(iii) The expenditure pays in whole or in part for political advertising that either specifically names the candidate supported or opposed, or clearly and beyond any doubt identifies the candidate without using the candidate's name; and

(iv) The expenditure, alone or in conjunction with another expenditure or other expenditures of the same person in support of or opposition to that candidate, has a value of one-half the contribution limit from an individual per election or more. A series of expenditures, each of which is under one-half the contribution limit from an individual per election, constitutes one independent expenditure if their cumulative value is one-half the contribution limit from an individual per election or more.

2018 H.B. 2938 § 2 (to be codified at Wash. Rev. Code § 42.17A.005(29)(a) (emphasis added)).

III. ELECTIONEERING COMMUNICATIONS

(a) Regulation of ECs. Washington regulates “electioneering communications.” *See* Wash. Rev. Code § 42.17A.005(19).

(b) What Content Triggers Regulation as an Electioneering Communication. A communication is regulated if it: “Clearly identifies a candidate for a state, local, or judicial office either by specifically naming the candidate, or identifying the candidate without using the candidate's name.” *Id.* § 42.17A.005(19)(a)(i).

(c) Types of Media Covered. Electioneering communications cover “any broadcast, cable, or satellite television or radio transmission, digital communication, United States postal service mailing, billboard, newspaper, or periodical” 2018 H.B. 2938 § 2 (to be codified at Wash. Rev. Code § 42.17A.005(22)(a)).

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(d) Reporting Threshold. The threshold for reporting is making any EC or series of ECs within the time windows totaling \$1,000 or more. Wash. Rev. Code § 42.17A.005(19)(a)(iii).

(e) Time Windows. The time window is communications that are disseminated “within sixty days before any election for that office in the jurisdiction in which the candidate [identified] is seeking election.” *Id.* § 42.17A.005(19)(a)(ii).

(f) Jurisdictional Limitation. Electioneering communications are those that are disseminated “in the jurisdiction in which the candidate [identified] is seeking election.” *Id.* § 42.17A.005(19)(a)(ii).

(g) Donor Disclosure. If sponsor “undertakes *a special solicitation* of its members or other persons for an electioneering communication, or it otherwise *receives funds for an electioneering communication*,” then reports must disclose donors “whose funds were used to pay for the electioneering communication.” *Id.* § 42.17A.305(1)(b) (emphasis added).

(h) 501(c)(3) Exemption. There is no specific 501(c)(3) exemption in the electioneering communications law. *See id.* § 42.17A.005(19)(b).

(i) Media Exemption. Media exemption applies for:

A news item, feature, commentary, or editorial *in a regularly scheduled news medium* that is:

(A) *Of primary interest to the general public;*

(B) *In a news medium controlled by a person whose business is that news medium; and*

(C) Not a medium controlled by a candidate or a political or incidental committee.

2018 S.B. 5991 § 3 (to be codified at Wash. Rev. Code § 42.17A.005(19)(b)(iii)) (emphasis added).

(j) Other Exemptions. Other exemptions apply for:

(i) Usual and customary advertising of a business owned by a candidate, even if the candidate is mentioned in the advertising when the candidate has been regularly mentioned in that advertising appearing at least twelve months preceding his or her becoming a candidate;

(ii) Advertising for candidate debates or forums when the advertising is paid for by or on behalf of the debate or forum sponsor, so long as two or more candidates for the same position have been invited to participate in the debate or forum; . . .

(iv) Slate cards and sample ballots;

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(v) Advertising for books, films, dissertations, or similar works (A) written by a candidate when the candidate entered into a contract for such publications or media at least twelve months before becoming a candidate, or (B) written about a candidate;

(vi) Public service announcements;

(vii) An internal political communication primarily limited to the members of or contributors to a political party organization or political or incidental committee, or to the officers, management staff, or stockholders of a corporation or similar enterprise, or to the members of a labor organization or other membership organization;

(viii) An expenditure by or contribution to the authorized committee of a candidate for state, local, or judicial office; or

(ix) Any other communication exempted by the commission through rule consistent with the intent of this chapter.

2018 H.B. 2938 § 2 (to be codified at Wash. Rev. Code § 42.17A.005(22)(b)); further amended by 2018 S.B. 5991 § 3.

IV. **DONOR DISCLOSURE FOR INDEPENDENT EXPENDITURES MADE BY ENTITIES THAT ARE NOT PACS**

(a) Donor Disclosure. Disclosure of the top-five donors is required in disclaimers for independent expenditures but does not appear to be required in the IE reports themselves. *Compare id.* § 42.17A.320(2) and (5) *with id.* §§ 42.17A.255 and .260.

There does not appear to be any allowance under which donors may avoid disclosure in the disclaimers if they prohibit their donations from being used to fund IEs, or whereby disclosure may be limited to donors to a segregated account that is used to fund IEs. *See id.*

In addition, “incidental committees” are required to report information about certain donors, as discussed below in Section IX.

(b) Threshold for Donor Disclosure. The IE disclaimer requires disclosure of the top-five donors who have given more than \$750 during the 12-month period preceding the IE’s initial date of dissemination. *Id.*

V. **DISCLAIMER REQUIREMENTS FOR INDEPENDENT EXPENDITURES AND ELECTIONEERING COMMUNICATIONS**

(a) Form of Disclaimer. Disclaimers for IEs and ECs generally must be written. *Id.* § 42.17A.320(1)-(3).

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Disclaimers for communications disseminated via “television or other medium that includes a visual image” may “either be clearly spoken, or appear in print.” *Id.* § 42.17A.320(4).

Disclaimers for communications disseminated “by a method that does not include a visual image” must be “clearly spoken.” *Id.* § 42.17A.320(5).

(b) Content of Disclaimer. Disclaimers for IEs and ECs must state: “No candidate authorized this ad. It is paid for by (name, address, city, state).” *Id.* § 42.17A.320(2)(a).

In addition, IEs and ECs sponsored by “nonindividual” entities other than political party committees must state:

“Top Five Contributors” followed by a listing of the names of the five persons or entities making the largest contributions in excess of seven hundred dollars reportable under this chapter during the twelve-month period preceding the date on which the advertisement is initially published or otherwise presented to the public.

Id. § 42.17A.320(5).

(c) Types of Media Covered. Disclaimer requirement applies to “political advertising,” which is defined as “any advertising displays, newspaper ads, billboards, signs, brochures, articles, tabloids, flyers, letters, radio or television presentations, or other means of mass communication, used for the purpose of appealing, directly or indirectly, for votes or for financial or other support or opposition in any election campaign.” *Id.* § 42.17A.005(36).

(d) Exceptions. The following are exempt from the disclaimer requirements:

Ashtrays, badges and badge holders, balloons, bingo chips, brushes, bumper stickers - size 4" x 15" or smaller, buttons, cigarette lighters, clothes pins, clothing, coasters, combs, cups, earrings, emery boards, envelopes, erasers, frisbees, glasses, golf balls, golf tees, hand-held signs, hats, horns, ice scrapers, inscriptions, key rings, knives, labels, letter openers, magnifying glasses, matchbooks, nail clippers, nail files, newspaper ads of one column inch or less (excluding online ads), noisemakers, paper and plastic cups, paper and plastic plates, paper weights, pencils, pendants, pennants, pens, pinwheels, plastic tableware, pocket protectors, pot holders, reader boards where message is affixed in moveable letters, ribbons, 12-inch or shorter rulers, shoe horns, skywriting, staple removers, stickers - size 2-3/4" x 1" or smaller, sunglasses, sun visors, swizzle sticks, state or local voters pamphlets published pursuant to law, tickets to fund-raisers, water towers, whistles, yard signs - size 4' x 8' or smaller, yo-yos, and all other similar items.

Rev. Code of Wash. § 42.17A.320(7); Wash. Admin. Code § 390-18-030(2).

“[S]mall online advertising” may use a modified disclaimer. Wash. Admin. Code § 390-18-030(3).

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An exception also applies in certain circumstances if “[t]he individual spends in the aggregate less than one hundred dollars to produce and distribute the advertising or less than fifty dollars to produce and distribute online political advertising.” § 390-18-030(4).

VI. STATUTORY OR REGULATORY AUTHORITY FOR SUPER PACS

Washington’s statute and regulations do not appear to explicitly authorize super PACs or independent expenditure-only committees. However, there are generally no limits or source prohibitions (except for certain out-of-state corporations and labor unions) on contributions to PACs, and an “expenditure or contribution for independent expenditures” also is not subject to the contribution limits. *Id.* §§ 42.17A.405(12) and (15)(c).

VII. MAJOR/PRIMARY PURPOSE FOR PAC STATUS

Washington’s statute and regulations do not have any major/primary purpose limitation on the definition of a PAC. *See id.* § 42.17A.005(37).

(IFS is aware that Washington’s PAC definition has been narrowed by judicial interpretation. *See Human Life of Wash., Inc. v. Brumsickle*, 624 F.3d 990 (9th Cir. 2010); Pub. Disc. Comm’n Interp. No. 07-02.)

VIII. PAC STATUS DETERMINATION AND THRESHOLDS

(a) PAC Definition. An organization is a PAC if it has “the expectation of receiving contributions or making expenditures in support of, or opposition to, any candidate or any ballot proposition.” Rev. Code of Wash. § 42.17A.005(37).

(As discussed above in Section II, however, the definition of “expenditure” is very open-ended and vague.)

(b) Threshold for PAC Registration/Reporting. PACs are exempt from the full reporting requirements if they do not raise or spend a total of \$5,000 (apparently, over any period of time) and if they do not accept any contribution(s) totaling more than \$500 from any source; however, they still must register with the PDC and certify that they do not expect to exceed these thresholds. Wash. Admin. Code §§ 390-16-105(2) and 390-16-115(2) and (3).

These thresholds do not appear to be adjusted for inflation. *See id. and id.* § 390-05-400.

(c) Threshold for Disclosure of PAC Donors. Donors to a PAC are required to be disclosed if they have given more than \$25 in total “during the election campaign.”²⁸ Rev. Code of Wash. § 42.17A.240(2) and (2)(c).

²⁸ An “election campaign” is defined as “any campaign in support of or in opposition to a candidate for election to public office and any campaign in support of, or in opposition to, a ballot proposition.” Rev. Code of Wash. § 42.17A.005(17).

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(d) Disclosure of Donors' Employer Information on PAC Reports. Donors' employer information is required for anyone who has given a total of more than \$100 to the PAC (apparently, over any period of time). Wash. Admin. Code § 390-16-034.

IX. REGULATION OF "INCIDENTAL COMMITTEES"

Washington regulates "incidental committees."

An "incidental committee" is defined as "any nonprofit organization not otherwise defined as a political committee but that may incidentally make a contribution or an expenditure in excess of the reporting thresholds in section 5 of this act, directly or through a political committee." 2018 S.B. 5991 § 3 (to be codified at Wash. Rev. Code § 42.17A.005(25)).

(It is not at all clear what the monetary threshold is for triggering incidental committee status. Section 4 of the bill requires an organization to register as an incidental committee if it makes contributions or expenditures totaling \$25,000 or more in a calendar year, while Section 5 of the bill (which Section 3 purports to rely on for the threshold for triggering incidental committee status) appears to prescribe a threshold of \$200 per monthly or pre- or post-election reporting period.)

An incidental committee must report "the source of the ten largest cumulative payments of [\$10,000 or more] it received in the current calendar year from a single person upon registration. *Id.* § 5 (to be codified at Wash. Rev. Code § 42.17A.235).

Grants from 501(c)(3) private foundations are not required to be reported if the grant "explicitly prohibit[s]" the use of grant funds for "election campaign purposes," and the grant also represents less than 25 percent of the incidental committee's total budget (the time period is unspecified, but presumably this is determined on a calendar year basis, consistent with the determination of the 10 largest sources of payments that would otherwise have to be reported). *Id.* § 6 (to be codified at Wash. Rev. Code § 42.17A.240(2)(e)).

X. PRIVATE ENFORCEMENT ACTIONS

Private lawsuits for campaign finance violations are permitted after certain amounts of time have elapsed after a citizen has filed an administrative complaint and notified the Washington Public Disclosure Commission or the state Attorney General of their intent to bring a civil action. 2018 H.B. 2938 § 16 (to be codified in an unspecified provision of Wash. Rev. Code § 42.17A).

XI. COORDINATION

(a) "Content Prong." An "expenditure" is considered to be a contribution if it is made "in cooperation, consultation, concert or collaboration with, or at the request or suggestion of a candidate, the candidate's authorized committee or agent." Wash. Admin. Code § 390-

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05-210; *compare id. with* Rev. Code of Wash. § 42.17A.005(26) (defining “independent expenditure”).

(As discussed above in Section II, the definition of “expenditure” is very open-ended and vague.)

(b) Former Employee/Vendor “Conduct Prong.” The coordination rule covers any vendors and employees of the candidate, candidate’s campaign, or agent of the candidate within the 12 months prior to the expenditure. Wash. Admin. Code § 390-05-210(3)(c) and (d).

(c) Public Information Exemption. Washington does not appear to explicitly recognize a publicly available information exemption in its coordination rules.

XII. LOBBYING

(a) General Lobbyist/Lobbyist Principal Donor Disclosure. Certain donor disclosure is required on lobbying registrations.

Specifically, when a lobbyist registers in Washington State, the registration must disclose, among other information:

If the lobbyist’s employer is an entity (including, but not limited to, business and trade associations) whose members include, or which as a representative entity undertakes lobbying activities for, businesses, groups, associations, or organizations, the name and address of each member of such entity or person represented by such entity whose fees, dues, payments, or other consideration paid to such entity during either of the prior two years have exceeded [\$1,450].

Wash. Rev. Code § 42.17A.600(1)(i); Wash. Admin. Code § 390-20-150 (adjusting the revenue disclosure threshold for inflation).

(IFS has confirmed with the Washington Public Disclosure Commission that only organizational or corporate sources of revenues exceeding the \$1,450 threshold are required to be disclosed, and individual donors and members are not subject to disclosure. However, for organizations that consist of both corporate/organizational and natural person members or donors, the corporate and organizational members and donors still must be disclosed if their dues or donations exceed the \$1,450 threshold. In addition, please note that the types of revenues covered by the disclosure requirement appear to be quite broad, and are not limited to “fees” and “dues,” but also include any “payments, or other consideration paid to” the lobbyist employer.)

(b) Grassroots Lobbying. Grassroots lobbying is regulated.

“Grassroots lobbying” is defined as “a program to the public, a substantial portion of which is intended, designed, or calculated primarily to influence legislation.” *Id.* § 42.17A.640(1).

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(c) Forms of Grassroots Lobbying Communications Regulated. The phrase “program to the public” is not defined and is quite broad and could generally mean any types of communications. *See id.*

(d) Grassroots Lobbying Reference to Specific Legislation. The definition of grassroots lobbying does not appear to require reference to specific legislation in order for a communication to be regulated as lobbying. *See XII(b), supra.*

(e) Grassroots Lobbying Registration and Reporting Thresholds. Grassroots lobbying registration is required for sponsors of grassroots lobbying that spend more than \$1,400 within a three-month period or \$700 in a one-month period. Wash. Rev. Code § 42.17A.640(1) and (2); Wash. Admin. Code §§ 390-20-125 and -150.

(f) Donor Disclosure for Grassroots Lobbying. Donor disclosure is required on grassroots lobbying reports. Wash. Rev. Code § 42.17A.640(2)(c) and (3).

(g) Earmarked Donor Disclosure for Grassroots Lobbying. Donor disclosure arguably is limited to earmarked donors who “contributed twenty-five dollars or more *to the [grassroots lobbying] campaign.*” *Id.* (emphasis added).

(h) Donor Disclosure Threshold for Grassroots Lobbying (If Not Limited to Earmarked Donors). N/A

(i) Threshold Indexing (If Grassroots Lobbying Is Regulated). All thresholds for lobbying registration and reporting are indexed for inflation. Wash. Rev. Code § 42.17A.125(2).

WEST VIRGINIA

I. FALSE POLITICAL SPEECH LAW

Under West Virginia law, any person who knowingly makes or publishes “any false statement in regard to any candidate, which . . . is intended or tends to affect any voting at any election whatever [is] guilty of a misdemeanor” and faces the possibility of a \$10,000 fine or imprisonment of up to one year. W. Va. Code § 3-8-11(c).

II. DEFINITION OF EXPENDITURE/EXPRESS ADVOCACY

An “independent expenditure” is defined as an expenditure:

(A) *Expressly advocating* the election or defeat of a clearly identified candidate; and

(B) That is not made in concert or cooperation with or at the request or suggestion of such candidate, his or her agents, the candidate’s authorized political committee or a political party committee or its agents.

W. Va. Code § 3-8-1a(16) (emphasis added).

“Express advocacy” is defined as a communication that fits into one of the following three categories:

(A) Uses phrases such as “vote for the Governor,” “re-elect your Senator,” “support the Democratic nominee for Supreme Court,” “cast your ballot for the Republican challenger for House of Delegates,” “Smith for House,” “Bob Smith in ‘04,” “vote Pro-Life” or “vote Pro-Choice” accompanied by a listing of clearly identified candidates described as Pro-Life or Pro-Choice, “vote against Old Hickory,” “defeat” accompanied by a picture of one or more candidates, “reject the incumbent”;

(B) Communications of campaign slogans or individual words, that can have no other reasonable meaning than to urge the election or defeat of one or more clearly identified candidates, such as posters, bumper stickers, advertisements, etc., which say “Smith’s the One,” “Jones ‘06,” “Baker”, etc.; or

(C) Is susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate.

Id. § 3-8-1a(13).

(IFS is aware that the U.S. Court of Appeals for the Fourth Circuit has upheld the constitutionality of West Virginia’s express advocacy standard on the basis that it is consistent with *WRTL*, although the court also suggested that there is “no[] meaningful” difference between the *WRTL* standard and the 11 C.F.R. 100.22(b) standard. *See CFIF v. Tennant*, 703 F.3d 270, 281 (4th Cir. 2013).)

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III. ELECTIONEERING COMMUNICATIONS

(a) Regulation of ECs. West Virginia regulates “electioneering communications.” *See* W. Va. Code § 3-8-1a(12)(A).

(b) What Content Triggers Regulation as an Electioneering Communication. A communication is regulated if it: “[r]efers to a clearly identified candidate for Governor, Secretary of State, Attorney General, Treasurer, Auditor, Commissioner of Agriculture, Supreme Court of Appeals or the Legislature.” *Id.*

(c) Types of Media Covered. Electioneering communications cover “any paid communication made by broadcast, cable or satellite signal, mass mailing, telephone bank, billboard advertisement or published in any newspaper, magazine or other periodical.”

(IFS is aware, however, that the “newspaper, magazine or other periodical” part of the statute has been invalidated by the U.S. Court of Appeals for the Fourth Circuit. *CFIF*, 706 F.3d 270 at 285.)

(d) Reporting Threshold. Any person who spends either (a) \$5,000 or more during any calendar year or (b) \$1,000 or more after the 15th day but more than 12 hours before any election on ECs is required to report. *Id.* § 3-8-2b(a).

(e) Time Windows. The time window is communications that are disseminated “within 30 days before a primary election or 60 days before a general or special election.” *Id.* § 3-8-1a(12)(A).

(f) Jurisdictional Limitation. Electioneering communications must be “targeted to the relevant electorate.” *Id.* “Targeted to the relevant electorate is defined at *id.* § 3-8-1a(26).

(g) Donor Disclosure. EC reports are required to disclose contributors who contributed a total of more than \$1,000 between the first day of the preceding calendar year and the disclosure date and “whose contributions were used to pay for electioneering communications.” *Id.* § 3-8-2b(b). This does not appear to be limited to contributors of earmarked funds.

There also does not appear to be any allowance under which donors may avoid disclosure if they prohibit their donations from being used to fund ECs, or whereby disclosure may be limited to donors to a segregated account that is used to fund ECs. *See id.*

(IFS is aware that holdings by a U.S. district court and the U.S. Court of Appeals for the Fourth Circuit leave it ambiguous as to whether disclosure on EC reports is limited to contributors of earmarked funds. Given this ambiguity, as a practical matter, it should be assumed that broader donor disclosure is required. *See CFIF*, 706 F.3d at 292; *see also CFIF v. Tennant*, 849 F. Supp. 2d 659, 719 (S.D. W. Va. 2011).)

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(h) 501(c)(3) Exemption. “A communication paid for by any organization operating under Section 501(c)(3) of the Internal Revenue Code of 1986” is exempt from the EC law. W. Va. Code § 3-8-1a(12)(B)(iv).

(i) Media Exemption. A media exemption applies for:

A news story, commentary or editorial disseminated through the facilities of any broadcast, cable or satellite television or radio station, newspaper, magazine or other periodical publication not owned or controlled by a political party, political committee or candidate: Provided, That a news story disseminated through a medium owned or controlled by a political party, political committee or candidate is nevertheless exempt if the news is:

(I) A bona fide news account communicated in a publication of general circulation or through a licensed broadcasting facility; and

(II) Is part of a general pattern of campaign-related news that gives reasonably equal coverage to all opposing candidates in the circulation, viewing or listening area.

Id. § 3-8-1a(12)(B)(i).

(j) Other Exemptions. Other exemptions apply for:

(ii) Activity by a candidate committee, party executive committee or caucus committee, or a political action committee that is required to be reported to the State Election Commission or the Secretary of State as an expenditure pursuant to section five of this article or the rules of the State Election Commission or the Secretary of State promulgated pursuant to such provision: Provided, That independent expenditures by a party executive committee or caucus committee or a political action committee required to be reported pursuant to subsection (b), section two of this article are not exempt from the reporting requirements of this section;

(iii) A candidate debate or forum conducted pursuant to rules adopted by the State Election Commission or the Secretary of State or a communication promoting that debate or forum made by or on behalf of its sponsor; . . .

(v) A communication made while the Legislature is in session which, incidental to promoting or opposing a specific piece of legislation pending before the Legislature, urges the audience to communicate with a member or members of the Legislature concerning that piece of legislation;

(vi) A statement or depiction by a membership organization, in existence prior to the date on which the individual named or depicted became a candidate, made in a newsletter or other communication distributed only to bona fide members of that organization;

(vii) A communication made solely for the purpose of attracting public attention to a product or service offered for sale by a candidate or by a business owned or operated by a candidate which does not mention an election, the office sought by the candidate or his or her status as a candidate; or

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(viii) A communication, such as a voter's guide, which refers to all of the candidates for one or more offices, which contains no appearance of endorsement for or opposition to the nomination or election of any candidate and which is intended as nonpartisan public education focused on issues and voting history.

Id. § 3-8-1a(12)(B).

IV. **DONOR DISCLOSURE FOR INDEPENDENT EXPENDITURES MADE BY ENTITIES THAT ARE NOT PACS**

(a) Donor Disclosure. IE reports require disclosure of any person who contributed a total of more than \$250 between the first day of the preceding calendar year, and the disclosure date, and “whose contributions were made *for the purpose of furthering the expenditure.*” *Id.* § 3-8-2(b)(1) (emphasis added). This language (especially when contrasted with the broader language in the EC reporting requirement) appears to suggest that disclosure is limited to donors who earmark their funds for IEs or the reported IE.

(IFS is aware that an attempt was made to clarify this donor disclosure requirement in litigation, but the court did not rule on the merits. *See CFIF*, 849 F. Supp. 2d at 717. IFS is also aware that many IE reports have been filed in W. Va. that have not disclosed any donors and is not aware of any enforcement action by the Secretary of State’s office for this lack of donor disclosure.)

(b) Threshold for Donor Disclosure. For donors who are required to be disclosed, the threshold is donors who have given more than \$250 between the first day of the preceding calendar year, and the disclosure date. W. Va. Code § 3-8-2(b)(1).

V. **DISCLAIMER REQUIREMENTS FOR INDEPENDENT EXPENDITURES AND ELECTIONEERING COMMUNICATIONS**

(a) Form of Disclaimer. If an IE or EC is made by “broadcast, cable or satellite transmission,” the disclaimer must be both spoken and in text. *See id.* §§ 3-8-2(e) and -2b(e)(2).

(b) Content of Disclaimer. Disclaimers for IEs and ECs must state that the communication “is not authorized by the candidate or the candidate’s committee” and identify the sponsor. *Id.*

(c) Types of Media Covered. The disclaimer requirement applies to all IEs and ECs. *Id.* As discussed above in Section III(c), under the statute, ECs include “any paid communication made by broadcast, cable or satellite signal, mass mailing, telephone bank, billboard advertisement or published in any newspaper, magazine or other periodical.” *Id.* § 3-8-1a(12)(A).

(d) Exceptions. There do not appear to be any exceptions to the disclaimer requirements generally. *See id.* §§ 3-8-2(e) and -2b(e)(2). As discussed above in Section III(h)-(j), there

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are certain exceptions to the EC definition that also would apply to the disclaimer requirement for ECs.

VI. STATUTORY OR REGULATORY AUTHORITY FOR SUPER PACS

West Virginia provides for “independent expenditure-only political action committees.” *See* W. Va. Code St. R. §§ 146-3-2.8. Although IEOPACs are permitted to accept unlimited contributions from any “person,” the term “person” does not include corporations, and there do not appear to be any exceptions to the general prohibition against corporate contributions that would permit corporate contributions to IEOPACs. *See id.* §§ 146-3-5.11, 146-3-2.14, and 146-1-3.1.

VII. MAJOR/PRIMARY PURPOSE FOR PAC STATUS

A “political action committee” is defined as “a committee organized by one or more persons for *the purpose* of supporting or opposing the nomination or election of one or more candidates.” W. Va. Code § 3-8-1a(21) (emphasis added); *see also* W. Va. Code St. R. 146-3-2.15 (same).

“The purpose” standard is unclear, and courts have taken opposite approaches in construing this standard. *Compare CFIF v. Ireland*, 2008 U.S. Dist. LEXIS 83856 at *48 (S.D. W. Va. 2008) and 849 F. Supp. 2d 659, 673 (S.D. W. Va. 2011) (holding that “the purpose” standard is more precise than the “major purpose” standard) with *Yamada*, 786 F.3d at 1200-1201 (suggesting that “the purpose” standard is broader than the “primary purpose” standard, and that it could mean *one of* an organization’s purposes).

VIII. PAC STATUS DETERMINATION AND THRESHOLDS

(a) PAC Definition. An organization is a PAC if it has “the purpose of *supporting or opposing* the nomination or election of one or more candidates.” W. Va. Code § 3-8-1a(21) (emphasis added); *see also* W. Va. Code St. R. 146-3-2.15 (same).

(Despite this vague language, IFS is aware that a federal district court has upheld the constitutionality of this definition on the basis that the *McConnell v. FEC* U.S. Supreme Court ruling upheld the “supporting or opposing” language in BCRA’s definition of “federal election activity” (“FEA”). *See CFIF*, 2008 U.S. Dist. LEXIS 83856 at *52 and 849 F. Supp. 2d at 673.)

(b) Threshold for PAC Registration/Reporting. There does not appear to be any monetary threshold for registering and reporting as a PAC. *See* W. Va. Code §§ 3-8-3 and -5.

(*See also* W. Va. Sec’y of State, 2016 Best Practices Guide for Campaign Finance at 5, *available at* <http://www.sos.wv.gov/elections/administrators/Documents/Guides/2016%20Campaign%20Finance%20Guide.pdf>.)

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(c) Threshold for Disclosure of PAC Donors. There does not appear to be any threshold for disclosure of PAC donors. *See id.* § 3-8-5a(a)(3). For contributors whose contributions aggregate more than \$250 in any one “election cycle,” address, occupation, and employer information also must be reported. *Id.*

(d) Disclosure of Donors’ Employer Information on PAC Reports. Donors’ employer information is required for anyone who exceeds the \$250 per-election cycle threshold. *Id.*

IX. REGULATION OF “INCIDENTAL COMMITTEES”

West Virginia does not regulate “incidental committees.”

X. PRIVATE ENFORCEMENT ACTIONS

The State Election Commission is charged with enforcement of the state’s campaign finance laws. *Id.* § 3-8-8(f).

XI. COORDINATION

(a) “Content Prong.” West Virginia’s coordination law applies to both “expenditures” and “electioneering communications.” *See id.* §§ 3-8-1a(16) and 3-8-2b(i). As discussed above in Section III, ECs are certain communications that refer to candidates within 30 days before a primary election or 60 days before a general or special election. *See id.* § 3-8-1a(12)(A).

(b) Former Employee/Vendor “Conduct Prong.” The coordination rule does not appear to specifically address the use of former employees and vendors. *See id.* §§ 3-8-1a(16) and 3-8-2b(i).

(c) Public Information Exemption. West Virginia does not appear to explicitly recognize a publicly available information exemption in its coordination rules. *See id.*

XII. LOBBYING

(a) General Lobbyist/Lobbyist Principal Donor Disclosure. Lobbying registrations and reports *generally* do not require donor disclosure. *See id.* §§ 6B-3-2(a) and -4. However, as discussed below in (f), donor disclosure is required for “grassroots lobbying campaigns.”

(b) Grassroots Lobbying. Grassroots lobbying is separately regulated. A “grassroots lobbying campaign” is defined as “a program addressed to the public, a substantial portion of which is intended, designed or calculated primarily to influence legislation.” *Id.* § 6B-3-5(1).

(c) Forms of Grassroots Lobbying Communications Regulated. The phrase “program addressed to the public” is not defined and is quite broad and could generally mean any types of communications. *See id.*

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(d) Grassroots Lobbying Reference to Specific Legislation. The definition of a “grassroots lobbying campaign” does not appear to require reference to specific legislation in order for a communication to be regulated as lobbying. *See id.*

(e) Grassroots Lobbying Registration and Reporting Thresholds. A person who spends more than \$200 in one month, or more than \$500 in a three-month period, is required to register and report. *Id.* § 6B-3-5.

(f) Donor Disclosure for Grassroots Lobbying. Donor disclosure is required on grassroots lobbying registrations/reports. *Id.* § 6B-3-5(c).

(g) Earmarked Donor Disclosure for Grassroots Lobbying. Donor disclosure is required for “each person contributing twenty-five dollars or more *to the campaign.*” *Id.* (emphasis added). Based on this statutory language, the disclosure requirement arguably is limited to disclosure of donors of earmarked funds.

(h) Donor Disclosure Threshold for Grassroots Lobbying (If Not Limited to Earmarked Donors). The disclosure threshold is each donor who has given \$25 or more “to the” grassroots lobbying campaign (apparently over any time period). *Id.*

(i) Threshold Indexing (If Grassroots Lobbying Is Regulated). The thresholds for grassroots lobbying registration/reporting and donor disclosure do not appear to be indexed for inflation. *See id.* § 6B-3-5.

WISCONSIN

I. FALSE POLITICAL SPEECH LAW

In Wisconsin, “No person may knowingly make or publish, or cause to be made or published, a false representation pertaining to a candidate or referendum which is intended or tends to affect voting at an election.” Wis. Stat. § 12.05.

II. DEFINITION OF EXPENDITURE/EXPRESS ADVOCACY

Wisconsin has codified into its statute the *Buckley* standard for express advocacy.

An “independent expenditure” is defined as an “expenditure for express advocacy by a person, if the expenditure is not made in coordination with a candidate, candidate committee, candidate's agent, legislative campaign committee, or political party.” *Id.* § 11.0101(16).

“Express advocacy” is defined as:

a communication that contains terms such as the following with reference to a clearly identified candidate and that unambiguously relates to the election or defeat of that candidate:

- (a) “Vote for”.
- (b) “Elect”.
- (c) “Support”.
- (d) “Cast your ballot for”.
- (e) “Smith for ... (an elective office)”.
- (f) “Vote against”.
- (g) “Defeat”.
- (h) “Reject”.
- (i) “Cast your ballot against”.

Id. § 11.0101(11).

(Wisconsin does not separately define “expenditures.”)

III. ELECTIONEERING COMMUNICATIONS

Wisconsin does not regulate electioneering communications.

IV. DONOR DISCLOSURE FOR INDEPENDENT EXPENDITURES MADE BY ENTITIES THAT ARE NOT PACS

(a) **Donor Disclosure.** IE reports do not require donor disclosure. *See id.* § 11.1001(1)(b).

(*See also* Wis. Ethics Comm’n, Report of Independent Expenditures (Form ETHCF-7) (rev. Jan. 2016), *at* http://ethics.wi.gov/sites/default/files/forms/ethcf_7_ind_exp_and_oath_2016_fillable.pdf.)

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(b) **Threshold for Donor Disclosure.** N/A

V. DISCLAIMER REQUIREMENTS FOR INDEPENDENT EXPENDITURES AND ELECTIONEERING COMMUNICATIONS

(a) **Form of Disclaimer.** There are no particular form requirements for disclaimers. *See id.* §§ 11.1303.

(b) **Content of Disclaimer.** Disclaimers for IEs generally must “clearly identify [the] source” of the communication. *Id.* IEs costing more than \$2,500 specifically must use the words, “Paid for by,” followed by the name of the sponsor, and state that the ad is “Not authorized by any candidate or candidate’s agent or committee.” *Id.*

(c) **Types of Media Covered.** There are no particular types of media that are specifically covered by the disclaimer requirement. *See id.*

(d) **Exceptions.** The disclaimer requirement does not apply to “[s]mall items” on which the required disclaimers “cannot be conveniently printed,” such as “text messages, social media communications, and certain small advertisements on mobile phones” are exempt from the disclaimer requirements. *Id.* § 11.1303.

VI. STATUTORY OR REGULATORY AUTHORITY FOR SUPER PACS

Wisconsin provides for super PACs in the form of “independent expenditure committees,” which may accept unlimited contributions (including from corporations and unions). *See id.* §§ 11.0101(17), 11.1101, and 11.1112.

VII. MAJOR/PRIMARY PURPOSE FOR PAC STATUS

A “political action committee” is defined as:

any person, other than an individual, or any permanent or temporary combination of 2 or more persons unrelated by marriage that satisfies any of the following:

1. It has *the major purpose* of express advocacy, as specified in the person’s organizational or governing documents, the person’s bylaws, resolutions of the person’s governing body, or registration statements filed by the person under this chapter.

2. It uses *more than 50 percent of its total spending* in a 12-month period on expenditures for express advocacy, expenditures made to support or defeat a referendum, and contributions made to a candidate committee, legislative campaign committee, or political party. In this subdivision, total spending does not include a committee’s fundraising or administrative expenses.

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Wis. Stat. § 11.0101(25) (emphasis added).

VIII. PAC STATUS DETERMINATION AND THRESHOLDS

(a) PAC Definition. Although Wisconsin’s PAC definition uses a *Buckley* express advocacy standard for candidate advocacy, it uses a broader standard for referendum advocacy.

A “political action committee” is defined as:

any person, other than an individual, or any permanent or temporary combination of 2 or more persons unrelated by marriage that satisfies any of the following:

1. It has the major purpose of express advocacy, as specified in the person’s organizational or governing documents, the person’s bylaws, resolutions of the person’s governing body, or registration statements filed by the person under this chapter.
2. It uses more than 50 percent of its total spending in a 12-month period on expenditures for express advocacy, *expenditures made to support or defeat a referendum*, and contributions made to a candidate committee, legislative campaign committee, or political party. In this subdivision, total spending does not include a committee’s fundraising or administrative expenses.

Wis. Stat. § 11.0101(25) (emphasis added); *see also id.* § 11.0101(7) (defining “independent expenditure committee”).

The terms “expenditures” and “support or defeat” are not separately defined.

(b) Threshold for PAC Registration/Reporting. If a PAC or independent expenditure committee makes total disbursements exceeding \$2,500 per calendar year, it must register and report. *Id.* § 11.0102(1)(a) and (d).

This threshold does not appear to be adjusted for inflation. *See id.*

(c) Threshold for Disclosure of PAC Donors. There is no threshold for disclosure of PAC donors (if a donor gives a total of more than \$200 during the calendar year, the donor’s occupation also must be disclosed). *Id.* §§ 11.0504 (for political action committees) and 11.0604 (for independent expenditure committees).

(d) Disclosure of Donors’ Employer Information on PAC Reports. Donors’ employer information is not required. *See id.*

IX. REGULATION OF “INCIDENTAL COMMITTEES”

Wisconsin does not regulate “incidental committees.”

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X. PRIVATE ENFORCEMENT ACTIONS

The Wisconsin Ethics Commission is primarily responsible for enforcement of the state's campaign finance laws. *Id.* § 19.49. In addition to or in lieu of filing an administrative complaint with the Ethics Commission, any “elector” also may file a verified petition alleging that the Commission has failed or is failing to enforce the campaign finance laws, and requesting “injunctive relief, a writ of mandamus or prohibition or other such legal or equitable relief as may be appropriate to compel compliance with the law.” *Id.* § 19.554. Such a petition must be filed with the district attorney with jurisdiction over the matter, and if the district attorney fails to act within 15 days, with the state attorney general. *Id.*²⁹

XI. COORDINATION

(a) **“Content Prong.”** Wisconsin’s coordination law applies to “express advocacy.” *See id.* §§ 11.0101(16) and 11.1203. As discussed above in Section II, Wisconsin defines “express advocacy” using the *Buckley* standard. *See id.* § 11.0101(11).

(b) **Former Employee/Vendor “Conduct Prong.”** The coordination rule does not appear to specifically address the use of former employees and vendors. *See id.* §§ 11.0101(16) and 11.1203.

(c) **Public Information Exemption.** “Using publicly available information to create, produce, or distribute a communication” is not coordination, provided that no other coordinating conduct is present. *See id.* § 11.1203(3)(c).

XII. LOBBYING

(a) **General Lobbyist/Lobbyist Principal Donor Disclosure.** Lobbying registrations and reports do not appear to require donor disclosure. *See id.* §§ 13.62-.68.

(b) **Grassroots Lobbying.** Grassroots lobbying does not trigger registration.

The definition of “lobbying” specifically excludes “[l]obbying through communications media or by public addresses to audiences made up principally of persons other than legislators or agency officials.” *Id.* § 13.621(1)(a).

(However, for persons and entities that are already required to register as lobbyist principals, grassroots lobbying “paid advertising and any other activities” must be reported. *See id.* § 13.68(1)(a).)

(c) **Forms of Grassroots Lobbying Communications Regulated.** N/A

(d) **Grassroots Lobbying Reference to Specific Legislation.** N/A

²⁹ IFS does not consider this to be a private right of action since the action still must be brought by the district attorney or state attorney general.

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(e) Grassroots Lobbying Registration and Reporting Thresholds. N/A

(f) Donor Disclosure for Grassroots Lobbying. N/A

(g) Earmarked Donor Disclosure for Grassroots Lobbying. N/A

(h) Donor Disclosure Threshold for Grassroots Lobbying (If Not Limited to Earmarked Donors). N/A

(i) Threshold Indexing (If Grassroots Lobbying Is Regulated). N/A

WYOMING

I. FALSE POLITICAL SPEECH LAW

Wyoming does not appear to have a false political speech law.

II. DEFINITION OF EXPENDITURE/EXPRESS ADVOCACY

Wyoming does not define the term “expenditure.”

An “independent expenditure” is defined as “an expenditure that is made without consultation or coordination with a candidate or an agent of a candidate whose nomination or election the expenditure *supports* or whose opponent's nomination or election the expenditure *opposes*.” Wyo. Stat. § 22-25-102 (k)(i) (emphasis added).

Activities “supporting or opposing any ballot proposition” are also regulated. *Id.* § 22-25-106(b)(i).

The statute also refers to “mak[ing] independent expenditures for speech expressly advocating the election or defeat of a candidate.” *See id.* § 22-25-102 (k)(i). However, the term “express advocacy” (including any of its grammatical variants) is not defined, and arguably the reference to express advocacy is not part of the definition of an IE anyway.

III. ELECTIONEERING COMMUNICATIONS

Wyoming does not appear to regulate electioneering communications.

IV. DONOR DISCLOSURE FOR INDEPENDENT EXPENDITURES MADE BY ENTITIES THAT ARE NOT PACS

(a) Donor Disclosure. The statute appears to require generalized donor disclosure on IE reports as well as donors of earmarked funds. Specifically, the statute appears to require IE reports to disclose “the name of the person from whom” a “contribution” of \$25 or more (apparently over any period of time, whether per contribution or cumulative) is received, as well as “the disclosure of any source of funding to the organization excess of [\$1,000] *to further the expenditure*.” *Id.* § 22-25-106(b)(i), (c), and h(iii) (emphasis added). The term “contribution” does not appear to be defined.

(In practice, the Wyoming Secretary of State’s office appears to only require disclosure of donors of earmarked funds of more than \$1,000. *See* Wyo. Sec’y of State, Statement of Independent Expenditures, Contributions & Expenditures (rev. Aug. 2015), at http://soswy.state.wy.us/Forms/Elections/Organizations/Independent%20Expenditures_CE.pdf and Statement of Independent Expenditures, Contributions (rev. Aug. 2015), at http://soswy.state.wy.us/Forms/Elections/Organizations/Independent%20Expenditures_C.pdf.)

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(b) Threshold for Donor Disclosure. The statute appears to require disclosure of any donors who have given a total of \$25 or more to the sponsor of the IE, as well as any donors who have given more than \$1,000 “to further the expenditure.” Wyo. Stat. § 22-25-106(b)(i), (c), and h(iii).

There does not appear to be any allowance under which donors may avoid disclosure if they prohibit their donations from being used to fund IEs, or whereby disclosure may be limited to donors to a segregated account that is used to fund IEs.

V. DISCLAIMER REQUIREMENTS FOR INDEPENDENT EXPENDITURES AND ELECTIONEERING COMMUNICATIONS

(a) Form of Disclaimer. The advertising must “print or announce the name of the . . . organization . . . paying for the advertising.” *Id.* § 22-25-110(a).

(b) Content of Disclaimer. Disclaimers for IEs must “print or announce the name of the . . . organization . . . paying for the advertising.” *Id.*

(c) Types of Media Covered. There are no particular types of media that are specifically covered by the disclaimer requirement. *See id.*

(d) Exceptions. The disclaimer requirement does not apply to “small campaign items such as tickets, bumper stickers, pens, pencils, buttons, rulers, nail files, balloons and yard signs displaying the name of the candidate or office sought.” *Id.* § 22-25-110(b).

VI. STATUTORY OR REGULATORY AUTHORITY FOR SUPER PACS

Wyoming’s statute does not appear to provide for super PACs.

VII. MAJOR/PRIMARY PURPOSE FOR PAC STATUS

A “political action committee” is defined as:

any group of two (2) or more persons organized and associated for *the purpose* of raising, collecting or spending money for use in the aid of, or otherwise influencing or attempting to influence, directly or indirectly, the election or defeat of candidates for public office, candidate's committees, or political parties, for support of or opposition to any initiative or referendum petition drive or for the adoption or defeat of any ballot proposition.

Id. § 22-1-102(xx) (emphasis added).

“The purpose” standard is unclear, and courts have taken opposite approaches in construing this standard. *Compare CFIF v. Ireland*, 2008 U.S. Dist. LEXIS 83856 at *48 (S.D. W. Va. 2008) and 849 F. Supp. 2d 659, 673 (S.D. W. Va. 2011) (holding that “the purpose” standard is more precise than the “major purpose” standard) with *Yamada*, 786 F.3d at

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1200-1201 (suggesting that “the purpose” standard is broader than the “primary purpose” standard, and that it could mean *one of* an organization’s purposes).

VIII. PAC STATUS DETERMINATION AND THRESHOLDS

(a) PAC Definition. Wyoming’s PAC definition is based on activities that are not clearly defined.

A “political action committee” is defined as:

any group of two (2) or more persons organized and associated for the purpose of *raising, collecting or spending money for use in the aid of, or otherwise influencing or attempting to influence, directly or indirectly, the election or defeat of candidates* for public office, candidate's committees, or political parties, *for support of or opposition to any initiative* or referendum petition drive or *for the adoption or defeat of any ballot proposition.*

Id. § 22-1-102(xx) (emphasis added). None of the italicized terms or phrases appear to be defined.

(b) Threshold for PAC Registration/Reporting. It does not appear that there is any threshold for registering and reporting as a PAC. *See id.* §§ 22-25-101 and -106.

(c) Threshold for Disclosure of PAC Donors. Donors are required to be disclosed if they have given a total of \$25 or more (apparently over any period of time). *Id.* § 22-25-106(a)(iv).

(d) Disclosure of Donors’ Employer Information on PAC Reports. Donors’ employer information is not required. *See id.*

IX. REGULATION OF “INCIDENTAL COMMITTEES”

Wyoming does not appear to regulate “incidental committees.”

X. PRIVATE ENFORCEMENT ACTIONS

Private enforcement actions are not provided for. Any “qualified elector” with a complaint must go through the secretary of state, relevant district attorney, or state attorney general if the former authorities fail to take action. *Id.* § 22-26-121.

XI. COORDINATION

(a) “Content Prong.” Wyoming’s coordination law applies to “expenditures” that “support[]” or “oppose[]” candidates. *Id.* § 22-25-102(k)(i).

(b) Former Employee/Vendor “Conduct Prong.” Wyoming’s coordination law does not appear to specifically address the use of former employees and vendors. *See id.*

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(c) **Public Information Exemption.** Wyoming's coordination law does not appear to provide for a public information exception.

XII. LOBBYING

(a) **General Lobbyist/Lobbyist Principal Donor Disclosure.** *In general*, lobbying registrations and reports do not appear to require donor disclosure. *See id.* §§ 28-7-101(b) and 28-7-201; Sec'y of State Lobbying Discl. Act Wyo. Code R. § 2(a)(ii).

However, as discussed below in XII(f), donor disclosure is required for grassroots lobbying. *See* Wyo. Stat. § 22-24-201(a)(ii).

(b) **Grassroots Lobbying.** Grassroots lobbying is separately regulated in Wyoming.

Specifically, sponsoring "paid advertising in any communication media or for printed literature to support, oppose or otherwise influence legislation" requires registration and reporting. *Id.* §§ 22-24-201(a) and 28-7-201(k).

(c) **Forms of Grassroots Lobbying Communications Regulated.** "[P]aid advertising in any communication media or for printed literature to support, oppose or otherwise influence legislation" (in addition to advertising to "influence" any "statewide initiative or referendum") is regulated. *Id.*

"Communication media" is defined as "advertising on television, radio, in print media, on billboards and other electronic media." *Id.* § 22-24-201(e)(i).

"Printed literature" is defined as "any printed material but shall not include any member association printed communication not intended for public dissemination, bumper stickers, pens, pencils, buttons, rulers, nail files, balloons and yard signs." *Id.* § 22-24-201(e)(ii).

(d) **Grassroots Lobbying Reference to Specific Legislation.** A reference to specific legislation does not appear to be required for a communication to be regulated as grassroots lobbying. *See* discussion in XII(b) above and *id.* §§ 22-24-201(a) and 28-7-201(k).

(e) **Grassroots Lobbying Registration and Reporting Thresholds.** There does not appear to be any monetary threshold for grassroots lobbying registration and reporting. *See id.*

(f) **Donor Disclosure for Grassroots Lobbying.** Donor disclosure is required on grassroots lobbying reports. *See id.*

(g) **Earmarked Donor Disclosure for Grassroots Lobbying.** Donor disclosure is not limited to donors whose funds are earmarked for lobbying or grassroots lobbying. Specifically, "a statement of contributions and expenditures setting forth the full and complete record of contributions" is required under one reporting requirement, while the

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other reporting requirement requires “a statement of applicable receipts and expenditures.” *Id.* §§ 22-24-201(a)(ii) and 28-7-201(k).

(It is unclear how the two reporting requirements, which appear to require duplicative reporting, relate to each other. One provision – Wyo. Stat. § 22-24-201(a)(ii) – requires annual reports as well as monthly reports during the legislative session, while the other provision – *id.* § 28-7-201(k) – does not specify when reports are due.)

(h) Donor Disclosure Threshold for Grassroots Lobbying (If Not Limited to Earmarked Donors). There is no threshold for donor disclosure. *See id.*

(i) Threshold Indexing (If Grassroots Lobbying Is Regulated). N/A

NEW YORK CITY

I. FALSE POLITICAL SPEECH LAW

New York City does not appear to have a false political speech law.

II. DEFINITION OF EXPENDITURE/EXPRESS ADVOCACY

Although New York City law defines “independent expenditure,” the term appears to have no independent legal significance apart from “covered communications,” which include “express advocacy communications” and “electioneering communications.”

An “independent expenditure” is defined as “a monetary or in-kind expenditure made, or liability incurred, *in support of or in opposition to* a candidate in a covered election³⁰ or municipal ballot proposal or referendum, where no candidate, nor any agent or political committee authorized by a candidate, has authorized, requested, suggested, fostered or cooperated in any such activity.” N.Y. City Charter § 1052(a)(15)(a)(i); N.Y. City Campaign Fin. Bd. (*hereinafter*, “CFB”) R. 13-01 (emphasis added).

A “covered communication” is defined as “an express advocacy communication or electioneering communication.” CFB R. 13-01.

An “express advocacy communication” is defined, in relevant part, as:

a communication that contains a phrase including, but not limited to, “vote for,” “re-elect,” “support,” “cast your ballot for,” “Candidate for elected office,” “vote against,” “defeat,” “reject,” or “sign the petition for,” or a campaign slogan or words that in context and with limited reference to external events, such as the proximity to the election, can have no reasonable meaning other than to advocate the election, passage, or defeat of one or more clearly identified ballot proposals and/or candidates in a covered election, and is disseminated by means of: (1) radio, television, cable, or satellite broadcast; (2) telephone communication; (3) mass mailing; (4) other printed material; or (5) any other form of paid electoral advertising.

Id.

An “electioneering communication” is defined as certain communications that “refer[] to one or more clearly identified ballot proposals and/or candidates for a covered election” within certain pre-election time windows. *Id.*

³⁰ A “covered election” is defined as “any primary, run-off primary, special, run-off special or general election for nomination for election, or election, to the office of mayor, public advocate, comptroller, borough president or member of the city council.” N.Y. City Charter § 1052(a)(15)(a)(iii).

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III. ELECTIONEERING COMMUNICATIONS

(a) **Regulation of ECs.** New York City regulates “electioneering communications.” *See id.*

(b) **What Content Triggers Regulation as an Electioneering Communication.** A communication is regulated as an EC if it “refers to one or more clearly identified ballot proposals and/or candidates for a covered election” within certain pre-election time windows. *Id.*

(c) **Types of Media Covered.** Electioneering communications cover communications “disseminated by means of a radio, television, cable, or satellite broadcast, a paid advertisement such as in a periodical or on a billboard, or a mass mailing.” *Id.*

(d) **Reporting Threshold.** The threshold for reporting is making ECs totaling \$1,000 or more during an “election cycle.” CFB R. 13-02(b).

(e) **Time Windows.** The EC law covers communications that are “disseminated within 30 days of a covered primary or special election, or within 60 days of a covered general election.” CFB R. 13-01.

(f) **Jurisdictional Limitation.** There does not appear to be any jurisdictional limitation to the definition of an EC. *See id.*

(g) **Donor Disclosure.** If the sponsor of an EC has made “expenditures of \$100 or more aggregating \$5,000 or more in the twelve months preceding the election that refer to any single candidate,” the sponsor must disclose all other entities that have made contributions (of any amount) to the sponsor “since the first day of the calendar year preceding the year of the covered election,” as well as all individual donors who have given \$1,000 or more “during the 12 months preceding the election.” *Id.* R. 13-02(d).

(Second-level donor disclosure is also required for the donors to entities that trigger “major contributor” status by virtue of their contributions to EC sponsors. *See id.*)

Disclosure is not required for donors who give “for an explicitly stated non-electoral purpose,” provided that records of such contributions are maintained. *Id.* R. 13-02(d)(3).

(h) **501(c)(3) Exemption.** 501(c)(3)s are exempt from the EC law. *Id.* R.13-01.

(i) **Media Exemption.** A media exemption applies for:

An expenditure made during the ordinary conduct of business in connection with covering or carrying a news story, commentary, or editorial by any broadcasting station (including a cable television operator, programmer, or producer), website, newspaper, magazine, or other periodical publication, including any Internet or electronic publication.

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Id.

(j) Other Exemptions. “[A]ny communication by a labor or other membership organization aimed at its members, or by a corporation aimed at its stockholders,” is exempt from the EC law. N.Y. City Charter § 1052(a)(15)(a)(i); *see also* CFB R. 13-01.

IV. DONOR DISCLOSURE FOR INDEPENDENT EXPENDITURES MADE BY ENTITIES THAT ARE NOT PACS

(a) Donor Disclosure. If the sponsor of an “express advocacy communication” has made “expenditures of \$100 or more aggregating \$5,000 or more in the twelve months preceding the election that refer to any single candidate,” the sponsor must disclose all other entities that have made contributions (of any amount) to the sponsor “since the first day of the calendar year preceding the year of the covered election,” as well as all individual donors who have given \$1,000 or more “during the 12 months preceding the election.” *Id.* R. 13-02(d).

(Second-level donor disclosure is also required for the donors to entities that trigger “major contributor” status by virtue of their contributions to EC sponsors. *See id.*)

(b) Threshold for Donor Disclosure. See Section IV(a) above.

Disclosure is not required for donors who give “for an explicitly stated non-electoral purpose,” provided that records of such contributions are maintained. *Id.* R. 13-02(d)(3).

V. DISCLAIMER REQUIREMENTS FOR INDEPENDENT EXPENDITURES AND ELECTIONEERING COMMUNICATIONS

(a) Form of Disclaimer. For “television, internet videos, or other types of video communications,” the disclaimer must be both spoken and also displayed in text. *Id.* R. 13-04(a)(2).

(b) Content of Disclaimer. Required disclaimers for ECs and IEs are as follows:

(1) For printed material, the words “Paid for by” must appear, followed by (i) the name of the independent spender; (ii) if the spender is an entity: (A) the name of any individual or entity that owns or controls more than 50% of the independent spender, (B) the name of the independent spender’s chief executive officer or equivalent, if any, and (C) the independent spender’s top donors as described in subdivision (b) of this section; and (iii) the words “Not authorized by any candidate or candidate committee. More information at nyc.gov/FollowTheMoney.” Such words must appear in a conspicuous size and style and must be enclosed in a box within the borders of the communication.

(2) For television, internet videos, or other types of video communications, the words “Paid for by” followed by the name of the independent spender must be clearly spoken at the beginning or end of the communication in a pitch and tone substantially similar to the rest of the communication. Additionally,

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simultaneous with the spoken disclosure, in a conspicuous size and style and enclosed in a box, the words “Paid for by” must appear followed by: (i) the name of the independent spender; (ii) if the spender is an entity, the spender’s top donors as described in subdivision (b) of this section; and (iii) the words “Not authorized by any candidate or candidate committee. More information at nyc.gov/FollowTheMoney”.

(3) For radio, internet audio, or automated telephone calls, the words “Paid for by” followed by (i) the name of the independent spender; (ii) if the spender is an entity, the spender’s top donors as described in subdivision (b) of this section; and (iii) the words “Not authorized by any candidate or candidate committee. More information at nyc.gov/FollowTheMoney”, must be clearly spoken at the end of the communication in a pitch and tone substantially similar to the rest of the communication. For radio and internet audio communications of 30 seconds in duration or shorter, subparagraph (ii) of this paragraph may be omitted.

(4) For non-automated telephone calls lasting longer than ten seconds, the words “This call is paid for by” followed by the name of the independent spender and the words “Not authorized by any candidate or candidate committee. More information is available at nyc.gov/FollowTheMoney” must be clearly spoken during the call in a pitch and tone substantially similar to the rest of the call.

Id. R. 13-04(a).

The method for determining an organization’s “top donors” for the disclaimer requirements is set forth in *id.* R. 13-04(b).

(c) Types of Media Covered. See Section V(b) above.

(d) Exceptions. The exceptions for 501(c)(3)s (for ECs), internal membership and stockholder communications, and news media discussed above in Section III(h)-(j) also appear to apply to the disclaimer requirements. *See id.* R. 13-04(a) and -01 and N.Y. City Charter § 1052(a)(15)(a)(i).

VI. STATUTORY OR REGULATORY AUTHORITY FOR SUPER PACS

New York City law does not appear to provide for super PACs.

VII. MAJOR/PRIMARY PURPOSE FOR PAC STATUS

Political committee status does not appear to be relevant under New York City’s campaign finance law except for the purposes of determining whether an entity is eligible to make contributions to a candidate participating in the city’s public financing program. *See* N.Y. City Admin. Code § 3-707.

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(See also CFB, Registered Political Committees, at <http://www.nyccfb.info/follow-the-money/registered-political-committees> and Political Committee Registration, at https://www.nyccfb.info/PDF/forms/pcom_registration.pdf.)

VIII. **PAC STATUS DETERMINATION AND THRESHOLDS**

See Section VII above.

IX. **REGULATION OF “INCIDENTAL COMMITTEES”**

New York City does not appear to regulate “incidental committees.”

X. **PRIVATE ENFORCEMENT ACTIONS**

The CFB appears to have the exclusive authority to investigate and enforce violations of the city’s campaign finance laws. See N.Y. City Admin. Code §§ 3-708, -710.5, and -711 and CFB R. 13-10.

(See also CFB, How to File a Complaint, at <http://www.nyccfb.info/law/file-complaint>.)

XI. **COORDINATION**

(a) **“Content Prong.”** New York City’s coordination law appears to apply to “express advocacy communications” and “electioneering communications.” See CFB R. 13-01 (defining “independent expenditure,” “independent spender,” “covered communication,” and “covered expenditure”).

(b) **Former Employee/Vendor “Conduct Prong.”** New York City’s coordination law does not appear to specifically address the use of former employees and vendors. See *id.* and N.Y. City Charter § 1052(a)(15)(a)(iii).

(c) **Public Information Exemption.** New York City’s coordination law does not appear to provide for a public information exception. See *id.*

XII. **LOBBYING**

(a) **General Lobbyist/Lobbyist Principal Donor Disclosure.** Lobbying registrations and reports do not appear to require donor disclosure. See N.Y. City Admin. Code §§ 3-213(c), -216(b), and -217(c).

(b) **Grassroots Lobbying.** Grassroots lobbying is regulated in New York City.

“Lobbying” is defined, in relevant part, as:

any attempt to influence:

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(i) any determination made by the city council or any member thereof with respect to the introduction, passage, defeat, or substance of any local legislation or resolution,

(ii) any determination made by the mayor to support, oppose, approve, or disapprove any local legislation or resolution, whether or not such legislation or resolution has been introduced in the city council . . .

Id. § 3-211(c)(1) (emphasis added).

(IFS is aware that the City Clerk's office has confirmed that grassroots lobbying is covered by the city lobbying law. *See* N.Y. City Clerk, Lobbying Bureau, Adv. Op. No. 1990-1.)

(c) Forms of Grassroots Lobbying Communications Regulated. There are no particular forms of communications that are regulated as grassroots lobbying. *See id.*

(d) Grassroots Lobbying Reference to Specific Legislation. A reference to specific legislation does not appear to be required for a communication to be regulated as grassroots lobbying. *See id.*

(e) Grassroots Lobbying Registration and Reporting Thresholds. The threshold for lobbyist registration and reporting is spending \$5,000 or more for lobbying in any calendar year. *See id.* § 3-213(a)(1).

(f) Donor Disclosure for Grassroots Lobbying. As discussed in Section XII(a) above, donor disclosure does not appear to be required. *See* N.Y. City Admin. Code §§ 3-213(c), -216(b), and -217(c).

(g) Earmarked Donor Disclosure for Grassroots Lobbying. N/A

(h) Donor Disclosure Threshold for Grassroots Lobbying (If Not Limited to Earmarked Donors). N/A

(i) Threshold Indexing (If Grassroots Lobbying Is Regulated). The threshold for lobbyist registration/reporting does not appear to be indexed for inflation. *See id.* § 3-213(a)(1).

SEATTLE

I. FALSE POLITICAL SPEECH LAW

Seattle does not appear to have a false political speech law.

II. DEFINITION OF EXPENDITURE/EXPRESS ADVOCACY

An “expenditure” is defined, in relevant part, as any payment “or anything of value *for the purpose of* assisting, benefiting or honoring any public official or candidate, or *assisting in furthering or opposing any election campaign.*” Seattle Mun. Code § 2.04.010 (emphasis added).

An “independent expenditure” is defined as:

an expenditure *on behalf of, or opposing* any election campaign, when such expenditure is made independently of the candidate, his/her political committee, or agent, or of any ballot proposition committee or its officers or agents, and when such expenditure is made without the prior consent, or the collusion, or the cooperation, of the candidate or his/her agent or political committee, or the ballot proposition committee or its officers or agents, and when such expenditure is not a contribution as defined in Section 2.04.010.

Id. (emphasis added).

III. ELECTIONEERING COMMUNICATIONS

Seattle does not appear to regulate ECs.

IV. DONOR DISCLOSURE FOR INDEPENDENT EXPENDITURES MADE BY ENTITIES THAT ARE NOT PACS

Donor disclosure does not appear to be required on IE reports. *See id.* § 2.04.270(A)(5).

V. DISCLAIMER REQUIREMENTS FOR INDEPENDENT EXPENDITURES AND ELECTIONEERING COMMUNICATIONS

(a) Form of Disclaimer. There are no particular form requirements for disclaimers. *See id.* § 2.04.290(B).

(b) Content of Disclaimer. The disclaimer must state, “Paid for by” or “Sponsored by” followed by the name of the sponsor, and “No candidate authorized this ad. It is paid for by (name, address, city, state).” *Id.*

(c) Types of Media Covered. The disclaimer requirement is not limited to any particular types of media. *See id.*

(d) Exceptions. The disclaimer requirement does not apply to:

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- “web sites and electronic communications do not require sponsor identification if they were designed, drafted and distributed by individuals who do not ordinarily charge a fee to design, draft, or distribute web site or electronic -communications, are not paid by someone to do so, and are using their personal computers and lists of e-mail addresses that have no fair market value”; Seattle Ethics and Elections Comm’n R. 9(A)(1);
 - “leaflets containing only the expressions of the person who drafts, distributes by hand and pays for the copying of them and who functions independently of any campaign . . . ashtrays; badges & badge holders; balloons; bingo chips; brushes; bumper stickers (4” x 15” or smaller); business cards; buttons; cigarette lighters; clothes pins; clothing; coasters; combs; cups; earrings; emery boards; envelopes; erasers; frisbees; glasses; golf balls & tees; hand-held signs; hats; horns; ice scrapers; inscriptions; key rings; knives; labels; letter openers; magnifying glasses; matchbooks; nail clippers & files; newspaper ads (one column inch or smaller); noisemakers; official state or local voter pamphlets; paper & plastic cups; paper & plastic plates; paper weights; pencils; pendants; pennants; pens; pinwheels; plastic tableware; pocket protectors; pot holders; reader boards with moveable letters; ribbons; rulers (12” or smaller); shoe horns; skywriting; staple removers; stickers (2-3/4” x 1” or smaller); sun glasses; sun visors; swizzle sticks; tickets to fund raisers; water towers; whistles; yard signs; yo-yo’s and all similar items; *id.* R. 9(B);
- “letters to the editor, news or feature articles, editorial comment or replies thereto in a regularly published newspaper, periodical, or on a radio or television broadcast where payment for the printed space or broadcast time is not normally required;” *id.* R. 1(O).

VI. STATUTORY OR REGULATORY AUTHORITY FOR SUPER PACS

Seattle’s municipal code and regulations do not appear to explicitly authorize super PACs or independent expenditure-only committees. However, there are generally no limits or source prohibitions on contributions to PACs. *See* Seattle Mun. Code § 2.04.370.

VII. MAJOR/PRIMARY PURPOSE FOR PAC STATUS

Under the SEEC’s regulations, [a]n Organization is a political committee when *one of the major purposes of the Organization* is to receive contributions or to make expenditures to support or oppose a candidate(s) or to support or oppose a ballot issue(s).” SEEC R. 2(C)(3) (emphasis added).

VIII. PAC STATUS DETERMINATION AND THRESHOLDS

(a) PAC Definition. PAC status is triggered by “*receiving contributions or making expenditures* in support of, or opposition to, any candidate or any ballot proposition.” Seattle Mun. Code § 2.04.010; *see also* SEEC R. 2(C)(3) (emphasis added).

(As discussed above in Section II, however, the definition of “expenditure” is very vague and broad.)

SEATTLE

(b) Threshold for PAC Registration/Reporting. There is no threshold for PAC registration. *See* Seattle Mun. Code § 2.04.160(A). The threshold for PAC reporting is receiving total contributions or making total expenditures of more than \$200 during a calendar month. *See id.* § 2.04.230(B).

The reporting threshold does not appear to be adjusted for inflation. *See id.* § 2.04.370(G) (providing for inflation adjustments only for contribution limits).

(c) Threshold for Disclosure of PAC Donors. Donors to a PAC are required to be disclosed if they have given more than \$25 in total during the reporting period. *Id.* § 2.04.250(D).

(d) Disclosure of Donors' Employer Information on PAC Reports. Donors' employer information is required for anyone who has given a total of more than \$100 to the PAC during the reporting period. *Id.*

IX. REGULATION OF "INCIDENTAL COMMITTEES"

Seattle does not appear to regulate "incidental committees."

X. PRIVATE ENFORCEMENT ACTIONS

The SEEC appears to have the exclusive authority to investigate and enforce violations of the city's campaign finance laws. *See id.* § 2.04.510.

XI. COORDINATION

(a) "Content Prong." As discussed above in Section II, Seattle's coordination law covers any "expenditure on behalf of, or opposing any election campaign," *id.* § 2.04.010, and the definition of an "expenditure" is also very broad and vague, *see id.*

(b) Former Employee/Vendor "Conduct Prong." Seattle's coordination law does not appear to specifically address the use of former employees and vendors. *See id.* and SEEC R.8.

(c) Public Information Exemption. Seattle's coordination law does not appear to provide for a public information exception. *See id.*

XII. LOBBYING

(a) General Lobbyist/Lobbyist Principal Donor Disclosure. Certain donor disclosure is required on lobbyist registrations if the lobbyist employer/principal is an "entity (including, but not limited to, a business or trade association) . . . whose members include businesses, groups, associations, or organizations or which as a representative entity undertakes lobbying activities for businesses, groups, associations, or organizations." Seattle Mun. Code § 2.06.020(A)(2)(g).

SEATTLE

(b) Grassroots Lobbying. Grassroots lobbying does not appear to be regulated in Seattle.

“Lobbying” is defined as “*communications with city council members, legislative department staff, the mayor or the mayor’s staff* in an attempt to influence any of those individuals to develop, propose, draft, consider or reconsider, promote, adopt, enact, reject, take favorable action upon, approve, disapprove, veto, or fail to take action upon legislation.” *Id.* § 2.06.010(J).

(c) Forms of Grassroots Lobbying Communications Regulated. N/A

(d) Grassroots Lobbying Reference to Specific Legislation. N/A

(e) Grassroots Lobbying Registration and Reporting Thresholds. N/A

(f) Donor Disclosure for Grassroots Lobbying. N/A

(g) Earmarked Donor Disclosure for Grassroots Lobbying. N/A

(h) Donor Disclosure Threshold for Grassroots Lobbying (If Not Limited to Earmarked Donors). N/A

(i) Threshold Indexing (If Grassroots Lobbying Is Regulated). N/A



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