

Legal Issues Surrounding Social Media in the Policy Arena

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The contents of this presentation are for informational purposes only, and should not be relied upon for legal advice.
Always consult with counsel about your specific needs, concerns, activities and plans.

Social Media and the Law

- Lobbying Disclosure Act
- State Lobbying Law
- IRS Rules
- Campaign Finance Law



Social Media and the Law

- To a government investigator, prosecutor, policy opponent or watchdog group



= Evidence

- Law in this area is unsettled
- Most of the statutes were written before advent of social media

Lobbying Disclosure Act

- Indirect - or grassroots lobbying - is not covered by the LDA as lobbying
- Posting on a federal official's Facebook page, Twitter account, or other social media forum is a direct contact unless some exception applies
- The time you spend on preparing such postings or monitoring such postings can count towards your LDA filing threshold

Lobbying Disclosure Act

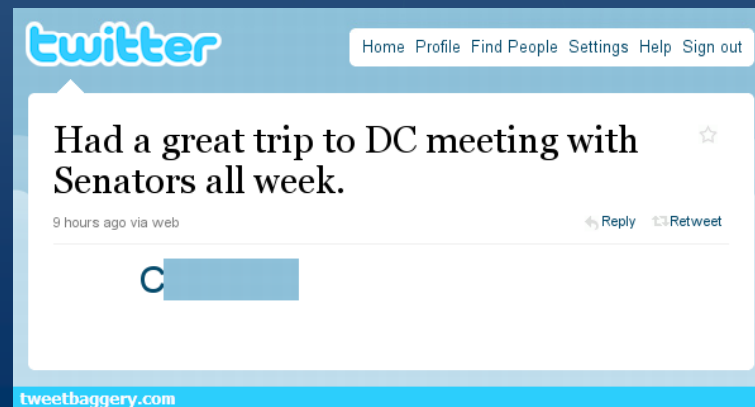
- Posting about daily activities can create reporting obligation or opposition fodder



- LD-2 Filings should be consistent with social media postings

Lobbying Disclosure Act

- Many rely on the 20% of time threshold to not register under the LDA
- See, e.g., CRP's report: "Lobbyists 2012: Out of the Game or Under the Radar?"
- Non-lobbyist posting about lobbying related activities can create headline and legal risk



State Lobbying Rules

- State lobbying laws vary widely
- Some states - like the LDA - do not cover grassroots or indirect contacts
- Other states would consider a social media grassroots operation to require lobbying registration and reporting



State Lobbying Rules

- Example: Vermont



- Under Vermont's view, this sponsored Twitter post would require your company or association to register and file lobbying reports.

State Lobbying Rules

- Example: Iowa



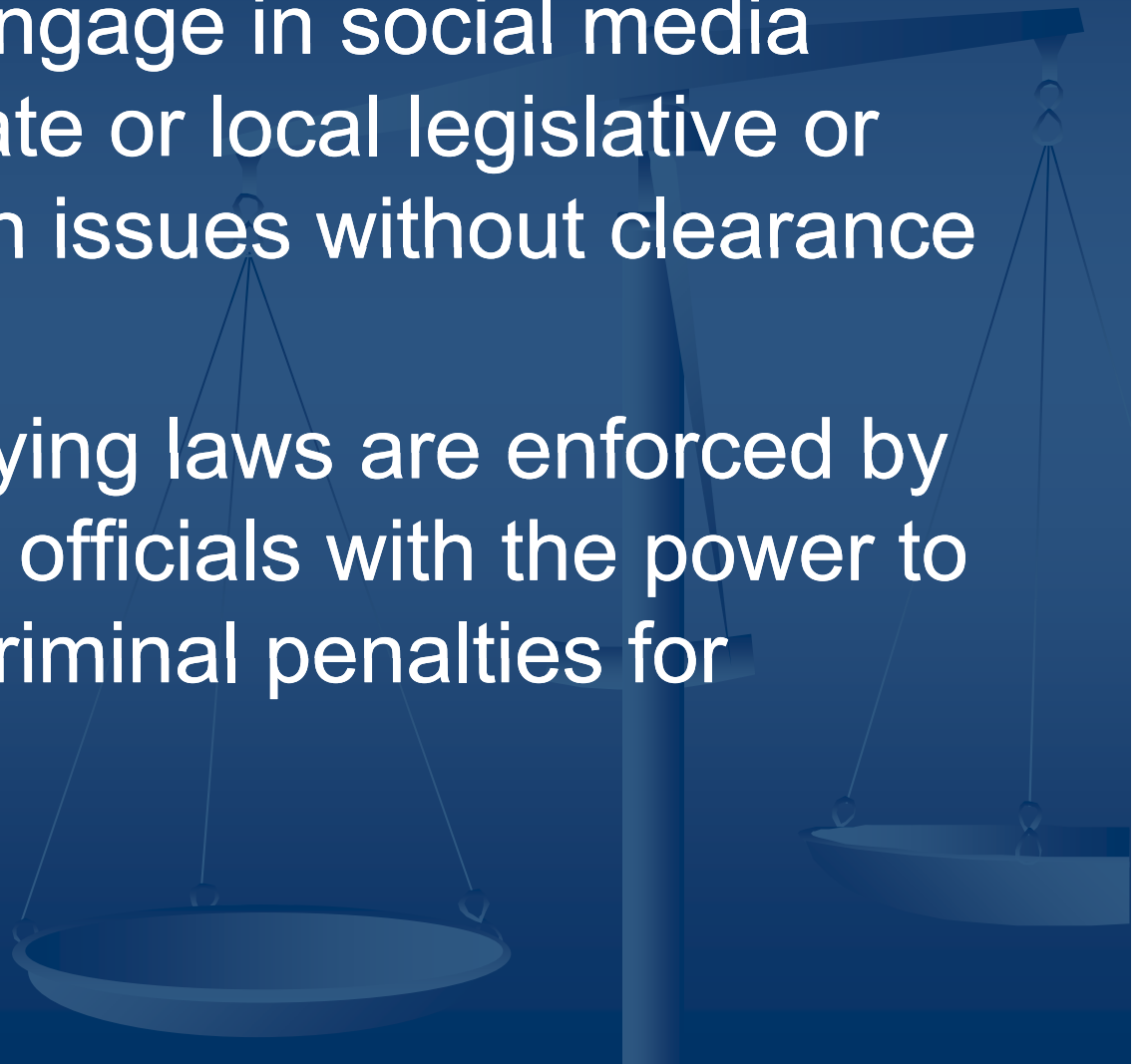
- Under Iowa's view, this sponsored Twitter post would not require your company or association to register or file lobbying reports.

State Lobbying Rules

- Example: Connecticut
- Catholic Church investigation after urging parishioners to board buses and go to Hartford to oppose church-related tax bill
- Example: Kansas
- State fined elected official who used Facebook to invite lobbyist to fundraiser during legislative session

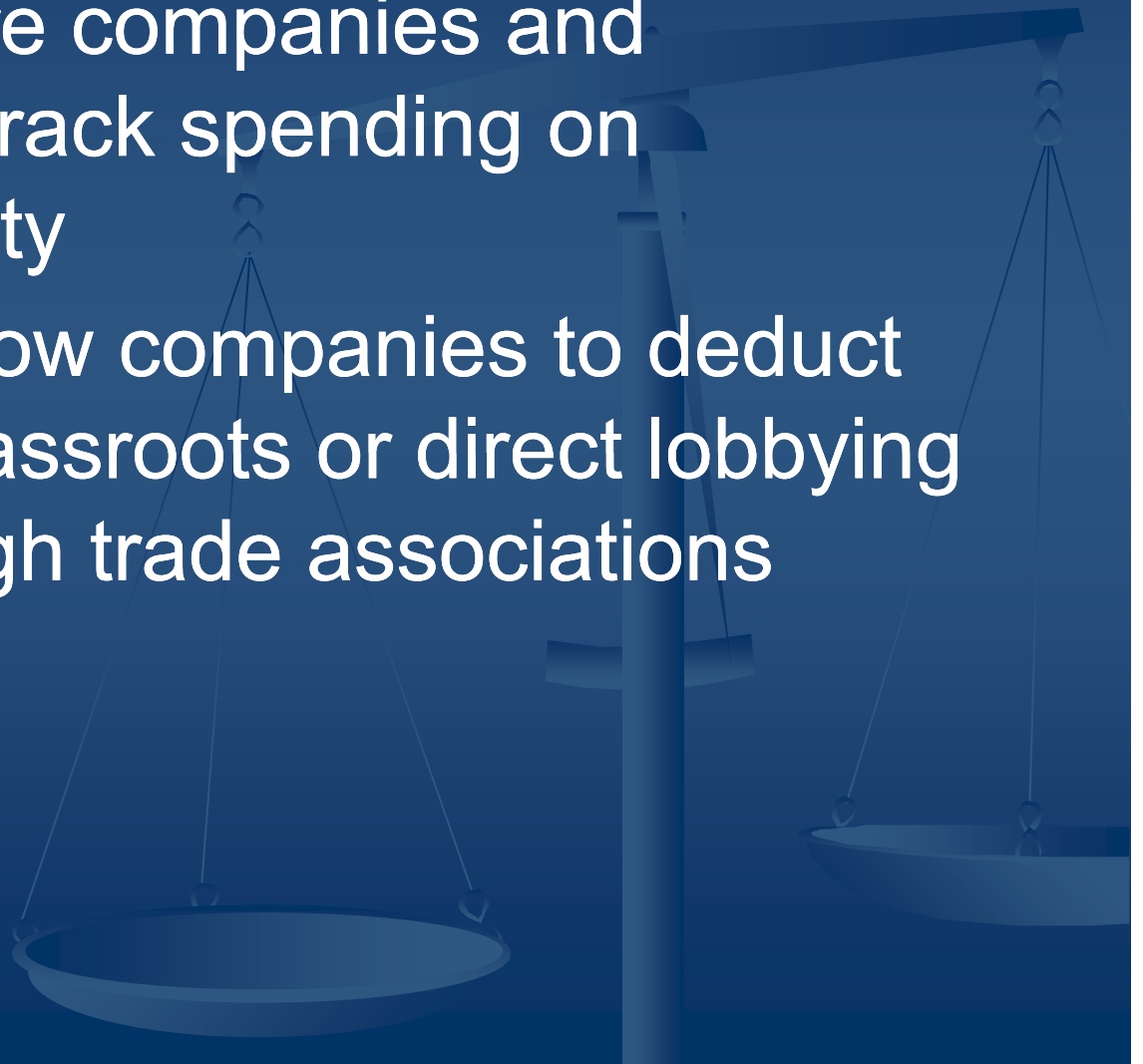
State Lobbying Rules

- Do not post or engage in social media discussion of state or local legislative or executive branch issues without clearance from counsel
- Many state lobbying laws are enforced by Commissions or officials with the power to impose civil or criminal penalties for violations



IRS Rules

- IRS rules require companies and associations to track spending on grassroots activity
- IRS does not allow companies to deduct expenses for grassroots or direct lobbying directly or through trade associations

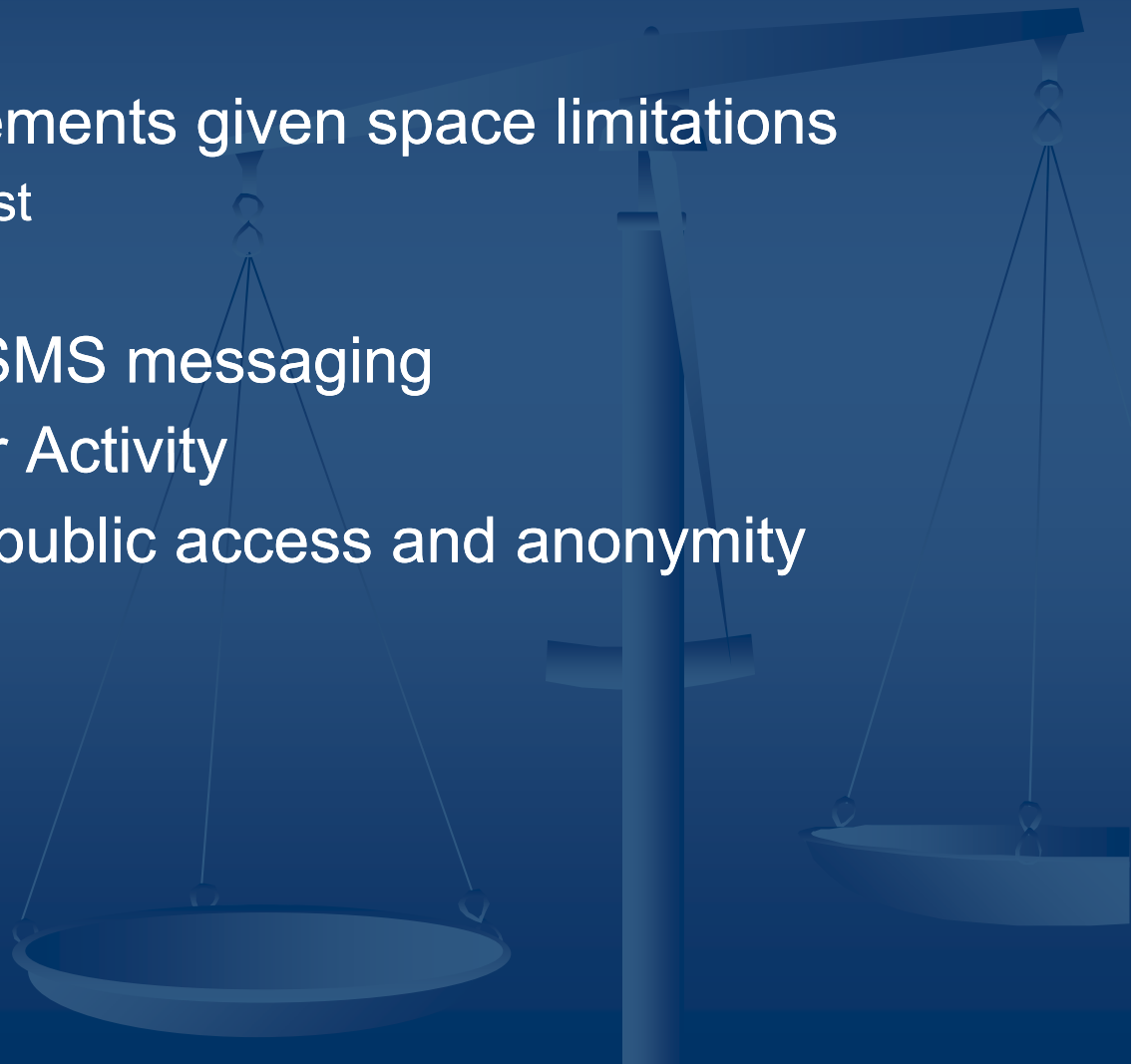


IRS Rules

- Track personnel time and expenses on grassroots activity even when through social media
- Track expenses related to social media activity such as:
 - Consultant expenses for your grassroots lobbying operation
 - Costs of building or operating apps or sites to use for social media with grassroots lobbying component
 - Paid or sponsored advertising on social media sites with grassroots component

Political Activity and Social Media

- Recent Issues
 - Disclaimer requirements given space limitations
 - Facebook Request
 - Google Request
 - Contributions by SMS messaging
 - Paid vs. Volunteer Activity
 - Twitter accounts, public access and anonymity



SSF and Restricted Class

- SSFs may only solicit from “Restricted Class”
 - Administrative and Executive Personnel and their families
 - Shareholders and their families
- SSFs for a trade association may solicit restricted class of members
 - Subject to annual written approval
 - Corporation may only authorize one trade association per year to solicit restricted class

SSFs and Social Media

- SSFs must use caution when using social media
 - Corporate intranet info constituting “solicitations” must be behind password protected firewall
 - Postings on Facebook, Meetup, Google, LinkedIn, etc. may NOT contain solicitations
- SSF postings that might cause issues
 - Event invites for internal fundraisers
 - Event invites for fundraisers where SSF is participating
 - Mentions or detailed discussions of SSF fundraising
 - Tweeting about an SSF event or solicitation

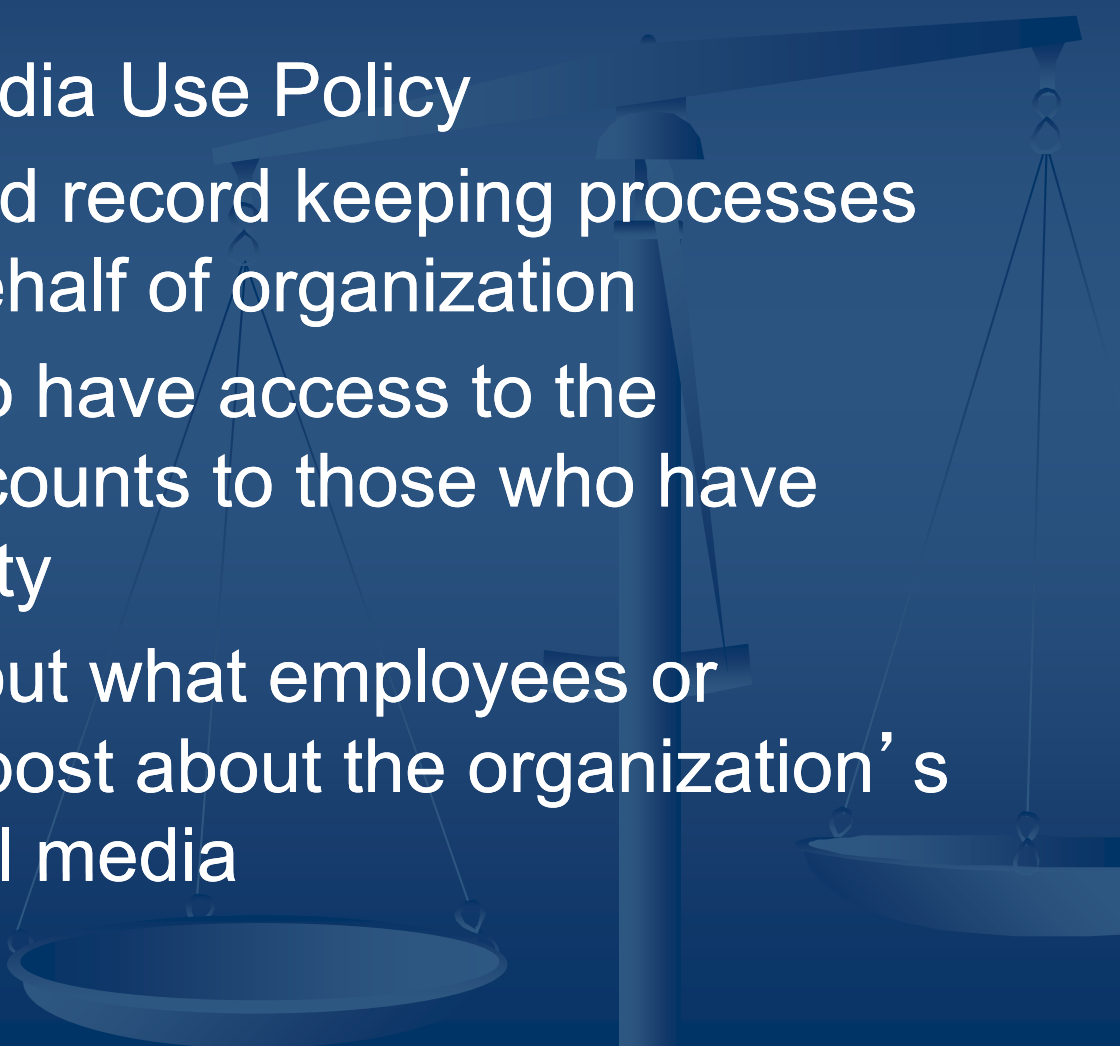
SSFs and the FEC

- Sources of Complaints
 - Campaign Finance “Watchdogs”
 - Disgruntled employees
 - Labor Unions
- Issues in Recent Complaints:
 - Pressuring employees to contribute to SSF
 - Solicitations in employment manuals
 - Solicitations beyond restricted class improperly
 - Solicitations beyond restricted class without allowing unions similar access
 - Whether postings on twitter or Facebook can amount to coordination or illegal contributions

Social Media and the FEC

- Use of Corporate resources
 - Volunteer time vs. compensated time
 - Overhead costs
 - 1 hour per week / 4 hour per month rule
- Disclaimers
- Sources, IP addresses and times of postings are likely discoverable in investigation, audit or complaint or public
 - Example – An official Press Secretary for a Member posting on campaign Twitter account all day
 - Example – Twitter or Facebook postings from a trade association

Social Media Best Practices

- Have a Social Media Use Policy
 - Have approval and record keeping processes for postings on behalf of organization
 - Limit persons who have access to the organization's accounts to those who have training or authority
 - Have a policy about what employees or consultants may post about the organization's activities on social media
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Questions?

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