ALERT

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Developments in Nonprofit and Association Law 2024–2025

By Jerald A. Jacobs, Dawn Crowell Murphy, Lori Panosyan, Julia E. Judish, Alvin Dunn

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The following is a review of notable cases and regulatory developments for associations and other nonprofit organizations at the federal and state levels during the last year, organized by the following categories:

- Governance
- Transactions
- Tax-Exemption
- First Amendment
- Antitrust and Competition
- Political Law and Lobbying
- Public Records
- Employment and Benefits
- Intellectual Property
- Administrative Law

This review does not cover most challenges to Trump Administration actions, which are numerous and continue to evolve. You can learn more about those matters and Pillsbury's assessment of them through our Trump 2.0 Resource Center.

GOVERNANCE

District Court Denied TRO in Governance Dispute Involving Nonprofit Biotech and Board Chair

Access to Advanced Health Inst. v. Soon-Shiong, 2024 U.S. Dist. LEXIS 155750 (W.D. Wash. Aug. 22, 2024)

Access to Advanced Health Institute (AAHI), a Seattle-based nonprofit biotechnology research institute, sought a temporary restraining order (TRO) to prevent its board chair, Dr. Patrick Soon-Shiong, from participating in decisions related to a disputed $8 million grant from the Chan Soon-Shiong Family Foundation. AAHI's management alleged that Soon-Shiong had a conflict of interest and was obstructing the organization's ability to enforce the Foundation's contractual obligations. The lawsuit also challenged the legitimacy of a $9 million commitment made by the board to a South African medical institute and contested whether two new board members had been validly appointed

The U.S. District Court for the Western District of Washington denied the TRO. The court found that AAHI's management had not demonstrated a clear likelihood of success on the merits. It concluded that management lacked clear authority to initiate the lawsuit on AAHI's behalf, as the full board had not approved the action and the authority of the executives bringing the suit was contested. The court also found insufficient evidence that Soon-Shiong breached his fiduciary duties or that he stood to benefit financially from withholding funds.

The court further held that the alleged harms, including the potential loss of grant funds and the cost of an internal investigation, were compensable by monetary damages and therefore not irreparable. The court was also unconvinced that the dispute posed an imminent threat to AAHI's governance or justified extraordinary equitable relief. The emergency motion was denied.

TRANSACTIONS

Court Approved Asset Transfer from Nonprofit College to Touro University Under Not-for-Profit Corporation Law

In re N.Y. Coll. of Podiatric Med., 2024 NYLJ LEXIS 3853 (Sup. Ct. N.Y. Cnty. 2024)

The New York College of Podiatric Medicine (NYCPM), a nonprofit podiatric medical school, petitioned under New York Not-for-Profit Corporation Law §§ 510 and 511 to transfer substantially all of its assets to Touro University. The proposed transaction would result in NYCPM becoming an internal division of Touro, rather than remaining an independently licensed and accredited institution. Touro agreed to assume many of NYCPM's liabilities and provide operational support.

The Supreme Court of New York, New York County, approved the petition. The court found that the transaction did not involve monetary consideration but did include Touro's assumption of NYCPM's pre-closing liabilities, with certain exceptions. The assets transferred included real property, tangible and intellectual property, contracts, and ownership interests in a Cayman Islands insurance captive. The Attorney General approved the transaction, and NYCPM's board unanimously authorized it.

The court emphasized that while judicial scrutiny is required under NPC §§ 510 and 511 to protect against imprudent asset transfers, the circumstances here, namely, that Touro is also a nonprofit educational institution, did not raise concerns typical of asset sales to for-profit entities. NYCPM's financial challenges, including declining enrollment and operating deficits, supported the conclusion that the transaction would promote the school's purposes by improving access to resources and long-term sustainability. The assets will continue to be used in accordance with their original restricted purposes.

Arkansas Court of Appeals Reversed Finding that Nonprofit Had No Bylaws and Addressed Asset Distribution Upon Dissolution

Foster v. Muruaga-Atkins, 2024 Ark. App. 526, 700 S.W.3d 501 (Ark. Ct. App. 2024)

The Arkansas Court of Appeals partially reversed a decision by an Arkansas circuit court that had invalidated a vote by Allen Family Farm, Inc. (AFF), a nonprofit organization formed by descendants of James R. Allen, to sell family farmland. The circuit court had found that AFF lacked valid bylaws, that all direct descendants of James R. Allen were automatically members under the articles of incorporation, and that any distribution of proceeds from the sale of land would violate Arkansas nonprofit law.

The Court of Appeals disagreed with the circuit court's finding that AFF had no valid bylaws. It held that although the bylaws were unsigned, they had been consistently used and relied upon for nearly 40 years and were therefore valid by custom and acquiescence. The circuit court erred by failing to consider whether any amendments to the bylaws or distinctions in membership classes were valid under Arkansas law. That issue was remanded for further factual findings concerning membership status, voting rights, and whether different membership classes existed.

The Court of Appeals affirmed the circuit court's conclusion that, as a nonprofit corporation governed by the Arkansas Nonprofit Corporation Act of 1963, AFF may not distribute income or profits to members while in operation. However, it reversed the lower court's broad prohibition on distributing sale proceeds altogether. The appellate court clarified that the 1963 Act does not categorically bar nonprofits from distributing assets upon dissolution, and that such a distribution may be permissible depending on the language of AFF's articles of incorporation and the organization's intent. The issue of whether such a distribution was lawful was remanded for further consideration.

TAX EXEMPTION

Fifth Circuit Affirmed Denial of § 501(c)(4) Exemption Based on Private Benefit and Nonexempt Purpose

Mem'l Hermann Accountable Care Org. v. Comm'r, 120 F.4th 215 (5th Cir. 2024)

Memorial Hermann Accountable Care Organization (MHACO), a nonprofit entity operating in Texas, sought a declaratory judgment after the Internal Revenue Service (IRS) denied its application for tax exemption under Internal Revenue Code (IRC) Section 501(c)(4). MHACO argued that it operated exclusively for the promotion of social welfare, citing its participation in the Medicare Shared Savings Program (MSSP). The Tax Court rejected MHACO's claim, finding that its non-MSSP activities substantially benefited private insurers and health care providers.

The Fifth Circuit affirmed the Tax Court's ruling, holding that the Tax Court properly applied the "substantial nonexempt purpose" test to Section 501(c)(4) entities. It concluded that the "operated exclusively" language should be interpreted consistently with the interpretation applied under Section 501(c)(3), following *Better Business Bureau v. United States*, which held that a single substantial nonexempt purpose precludes exemption. Although MHACO claimed its services indirectly benefited the public by improving health care delivery, the court emphasized that nearly 80% of its patient population was covered by employer-sponsored plans and that MHACO provided no services to the uninsured.

MHACO argued for application of a "primary purpose" test, based on Treasury regulations. The court rejected this, stating that both tests interpret the same statutory phrase and lead to the same result. It further found that the IRS's determination was properly supported and that MHACO failed to meet its burden to prove entitlement to exemption. The court concluded that MHACO's operations primarily served its members, private insurers and providers, not the broader community, and thus failed to qualify under Section 501(c)(4).

IRS Denied 501(c)(3) Status to Business Association for Failing Operational Test
I.R.S. Priv. Ltr. Rul. 202448012 (Sept. 3, 2024)

The IRS issued a final adverse determination denying Section 501(c)(3) tax-exempt status to an organization that had applied via Form 1023-EZ, claiming to serve charitable purposes by promoting local economic vitality through community events and public art installations. The applicant, a membership-based business association composed of small business owners, organized programming such as holiday park decorations and events to draw foot traffic to a city's downtown and waterfront areas.

The IRS concluded the group failed the operational test under Treas. Reg. § 1.501(c)(3)-1(c)(1), finding that its activities primarily benefited private interests—namely, the commercial success of its members. Although the programming was free and open to the public, any public benefit was deemed insubstantial compared to the private benefit conferred. The agency also found that the entity failed to demonstrate that it served a public rather than a private interest, as required under Treas. Reg. § 1.501(c)(3)-1(d)(1)(ii).

Citing *Rev. Rul. 69-175*, *Rev. Rul. 75-286*, and *Better Business Bureau v. United States*, the IRS emphasized that a single substantial non-exempt purpose was sufficient to disqualify the organization. As a result, contributions to the group are not tax-deductible, and the entity must file federal income tax returns as a taxable organization.

Marketplace Provider Denied Tax-Exempt Status
I.R.S. Priv. Ltr. Rul. 202449016 (Dec. 6, 2024)

The IRS denied recognition of exemption under Section 501(c)(3) to an organization that operated a Sunday marketplace for local farmers, crafters and food vendors. The applicant submitted a Form 1023-EZ, stating that it provided space for vendors to sell produce, baked goods, crafts and artworks, charging a modest fee to cover expenses such as signage, liability insurance, supplies and entertainment. Excess revenues were applied to the following year's operations, and the marketplace used donated space and waived parking fees from a cooperating entity.

The IRS determined that the organization failed the operational test under Section 501(c)(3). It found that the group's primary activities consisted of facilitating private sales, advertising and promoting the market, and covering overhead costs that otherwise would have been borne by individual vendors. These activities were deemed commercial in nature and conducted for the private benefit of vendors rather than for a charitable or educational purpose. The IRS contrasted the applicant with organizations that operated markets for the benefit of needy individuals, noting that here the beneficiaries were ordinary for-profit vendors.

The IRS concluded that the operation of the farmers' market constituted a substantial non-exempt commercial purpose, that the organization served private rather than public interests, and that it therefore did not qualify for exemption under Section 501(c)(3).

IRS Approved Activities of Two LLC Subsidiaries as Charitable and Educational Under § 501(c)(3)
I.R.S. Priv. Ltr. Rul. 202451009 (Dec. 20, 2024)

The IRS ruled that the activities of two disregarded LLCs operated by a Section 501(c)(3) public charity qualify as charitable and educational within the meaning of the IRC. The tax-exempt nonprofit corporation focused on expanding access to postsecondary education and workforce readiness, had created LLC A and LLC B to pursue affiliated programmatic efforts. Both LLCs are disregarded for tax purposes but conduct separate educational and data-driven initiatives.

LLC A acquired the assets of another exempt entity and runs projects including a membership network of workforce and education institutions, production of educational documentaries, a student-employment program, and a postsecondary coaching initiative. LLC B, created with the nonprofit corporation's own funds, operates a national data platform focused on non-degree credentials (NDCs). Its work includes public-facing research, technical services for educational institutions, and convenings for stakeholders and policymakers.

The IRS reviewed the activities of both LLCs and found that they meet the regulatory standards for exempt educational and charitable purposes. The agency noted that LLC A's work aligns with revenue rulings covering public education, career counseling and workforce training. LLC B's data services, provided either for free or at nominal cost, further public understanding of education outcomes and NDCs and are considered analogous to research and dissemination work upheld in prior rulings. Based on the nonprofit corporation's representation that the services are conducted for exempt entities and the general public, and that no part of the net earnings inures to private benefit, the IRS concluded that the activities of both LLC A and LLC B support the parent organization's Section 501(c)(3) status.

IRS Classified Major Gift to Community Foundation as "Unusual Grant" Under Public Support Test
I.R.S. Priv. Ltr. Rul. 202512004 (Dec. 27, 2024)

The IRS issued a private letter ruling determining that a very large donation to a community foundation serving Western State qualified as an "unusual grant" under IRC § 170(b)(1)(A)(vi) and Treas. Reg. § 1.170A-9(f)(6)(ii). The IRS excludes unusual grants from the public support test because they are large, unexpected contributions that could otherwise distort an organization's ability to demonstrate ongoing broad public support and therefore qualify for public charity status. The donation, more than 100 times greater than what the foundation typically receives annually, was intended to support capital projects and capacity-building efforts for local nonprofits in the southwestern region of the state.

Although the donor had made prior contributions to the foundation, those earlier gifts were modest, and the donor did not qualify as a disqualified person under IRC Section 4946. The IRS concluded that the new gift met both the general criteria and the facts-and-circumstances test for an unusual grant. It emphasized that the foundation had consistently received broad public support, satisfied the one-third public support test without relying on unusual grants, and was not dependent on the donation for its operating expenses.

IRS Denied § 501(c)(3) Status to NIL-Based Nonprofit for Serving Private Interests of Student Athletes
I.R.S. Priv. Ltr. Rul. 202452017 (Dec. 27, 2024)

The IRS issued a final adverse determination denying Section 501(c)(3) status to a nonprofit organization that contracted with college athletes to promote charitable causes using their name, image, and likeness (NIL). The organization's stated mission was to connect student-athletes with Section 501(c)(3) partners to promote events and raise awareness. In exchange, athletes were compensated at market rates for their time and promotional reach.

According to the IRS, the organization failed the operational test under Treas. Reg. § 1.501(c)(3)-1(c)(1). While the activities were structured around partnerships with legitimate charities, the nonprofit's core function was arranging NIL deals and distributing payments to athletes. Because the nonprofit's primary activity conferred substantial private benefits to a select group of student-athletes, the IRS found the organization served private rather than public interests.

The IRS concluded that the organization did not qualify for tax-exempt status under Section 501(c)(3) because it operated more like a commercial intermediary than a public charity. Citing revenue rulings and court decisions, the IRS explained that charitable elements do not establish an exempt purpose if private benefits are more than incidental. It found that the nonprofit's primary activity, arranging paid NIL opportunities, resembled a business arrangement, disproportionately benefited athletes from a specific university, and lacked sufficient evidence of a broader public benefit. As a result, the organization was found not to operate exclusively for Section 501(c)(3) exempt purposes, and contributions to it are therefore not deductible under IRC Section 170.

IRS Revoked § 501(c)(3) Status Based on Insubstantial Charitable Activity and Excessive Gaming Operations
I.R.S. Priv. Ltr. Rul. 202526013 (June 27, 2025)

In this final adverse determination, the IRS revoked the tax-exempt status of an organization under Section 501(c)(3) after finding that its primary activity, operating bingo and gaming events, failed the operational test required for exemption. The organization had previously been granted exemption with public charity status under Section 509(a)(2), but an audit revealed that substantially all its income came from gaming activities, with only a small portion used to fund donations or scholarships.

Citing Treas. Reg. § 1.501(c)(3)-1(c)(1), the IRS concluded the organization was not operated exclusively for exempt purposes. Although it claimed to support other charities through its earnings, the IRS found that the bingo operations themselves served a business function rather than furthering a charitable mission. The organization was also found to have partnered with another nonprofit to run the bingo hall but maintained operational control and retained most of the proceeds.

The IRS emphasized that gaming may be used to raise funds, but the activity itself does not constitute a charitable purpose. Because the organization relied on gaming as its principal function and failed to demonstrate that such activity was in furtherance of an exempt purpose, it could not maintain its Section 501(c)(3) status. With the revocation retroactively effective to January 1, 2020, the organization will now be treated as a taxable entity going forward.

IRS Denied 501(c)(3) Exemption for Religious Loss-Sharing Group Due to Private Benefit Concerns
I.R.S. Priv. Ltr. Rul. 202142009 (Oct. 18, 2024)

The IRS denied Section 501(c)(3) status to a religious organization that operated a property and vehicle loss-sharing program for its members. While the organization stated that its purpose was to assist members during times of loss and disaster, the IRS concluded that it failed the operational test under Treas. Reg. §

1.501(c)(3)-1(c)(1) because it primarily served a private, not public, interest.

The group's two programs offered reimbursement for property and auto-related losses through a subscription-based model. Members paid fees based on the value of their property or vehicles, and funds were distributed only to those enrolled. Although the organization identified itself as a religious auxiliary of a larger church, the IRS found that the arrangement functioned more like a self-insurance or cooperative benefit plan. The benefits were concentrated within a closed membership, and there was minimal evidence of public benefit beyond that group.

The IRS determined that the organization did not qualify for tax-exempt status under Section 501(c)(3) because a substantial portion of its activities served private interests. The IRS reiterated that providing significant private benefits, even in a charitable or religious context, can disqualify an organization from exemption. Unlike cases where benefits were closely tied to religious practice, the organization in question operated primarily on assessment fees and used a loss-sharing model resembling a business. As a result, it was not considered to be operated exclusively for exempt purposes, contributions to it are not tax-deductible, and it must now file as a taxable entity.

Washington Court of Appeals Upheld B&O Tax on Nonprofit Membership Dues
Better Bus. Bureau Great W. & the Pac. v. Dep't of Revenue, 32 Wn. App. 2d 748, 561 P.3d 266 (Ct. App. Wash. Div. 2 2024)

The Better Business Bureau Great West & the Pacific (BBB), a nonprofit corporation, sought a refund of business and occupation (B&O) taxes paid in 2017, arguing that its membership dues were fully deductible under RCW 82.04.4282 as bona fide dues not paid in exchange for significant goods or services. The Department of Revenue (DOR) denied the deduction and prevailed on summary judgment.

The Court of Appeals affirmed, holding that BBB failed to meet its burden to show what portion of its dues, if any, qualified for the deduction. The court found that BBB members received significant value in return for their dues, including the right to advertise BBB accreditation, use the BBB seal and promote their BBB rating. These benefits exceeded the threshold for taxable services under Washington law.

The court rejected BBB's argument that collateral estoppel barred the DOR's position, noting that the prior ruling from 1981 involved a different tax period and materially different facts. The court also denied BBB's challenge to a protective order shielding a DOR internal memo, ruling that the document was exempt from disclosure under state tax confidentiality laws.

Because BBB provided no breakdown of how dues supported non-taxable services and offered only conclusory declarations about its operations, the court upheld full taxation of the dues.

FIRST AMENDMENT

Court Allowed First Amendment Retaliation Claim to Proceed Against State Council Members

In re Idaho Anti-Trafficking Coal., 2025 U.S. Dist. LEXIS 71809 (D. Idaho 2025)

The Idaho Anti-Trafficking Coalition (IATC), a nonprofit serving trafficking victims, sued members of the Idaho Council on Domestic Violence and Victim Assistance (ICDVVA), alleging that ICDVVA revoked a previously awarded $231,000 grant in retaliation for IATC's public criticism of a competing service provider and of ICDVVA itself. IATC claimed its First Amendment rights were violated when its executive director spoke to a reporter at InvestigateWest, which later published critical articles about ICDVVA's funding decisions, and following the articles' release, ICDVVA reversed its earlier grant award.

The U.S. District Court for the District of Idaho denied the defendants' motion to dismiss the First Amendment claim on qualified immunity grounds. The court held that IATC had plausibly alleged a violation of its clearly established rights under the *Pickering* balancing test, which weighs the government's interest in efficient operations against an individual's right to speak on matters of public concern and applies to independent contractors receiving government funding. The court found that ICDVVA acted like an employer in overseeing IATC's services, and that IATC's relationship with the state was sufficiently analogous to an employment relationship.

The court cited several communications by ICDVVA staff and board members as evidence of retaliatory motive. These included requests that IATC's director stop "bad-mouthing" ICDVVA and internal emails criticizing her contact with the press. The court also found that the state had not articulated a legitimate countervailing interest that outweighed IATC's right to speak publicly about alleged wrongdoing by a government-funded organization.

The court dismissed IATC's procedural due process claim, ruling that the nonprofit had no constitutionally protected property interest in the anticipated grant funding. Because grant offers were contingent and revocable, the court concluded that IATC's claim failed as a matter of law.

District Court Rejected Mootness and Jurisdiction Challenges to First Amendment Subpoena Suit

Am. Chemistry Council v. Bonta, No. 24-cv-1533 (D.D.C. May 1, 2025)

The American Chemistry Council (ACC), a nonprofit trade association, sued California Attorney General Rob Bonta over a subpoena issued during a state investigation into alleged deceptive environmental claims about plastics recycling. ACC argued that the subpoena sought privileged internal communications related to advocacy before the Federal Trade Commission (FTC) and violated the First and Fourteenth amendments. After Bonta withdrew the subpoena and dismissed the related enforcement action in California state court, he moved to dismiss ACC's suit for mootness and lack of personal jurisdiction.

The district court denied the motion in part. It found the case was not moot under the voluntary cessation doctrine, noting Bonta's refusal to rule out future efforts to obtain the same records through litigation. The court concluded that ACC's request for injunctive and declaratory relief remained a live controversy, particularly in light of the alleged ongoing chilling effect on ACC's member advocacy. On personal jurisdiction, the court held that Bonta's act of serving the California enforcement petition directly on ACC in Washington, D.C., created sufficient minimum contacts under the D.C. long-arm statute. The court found this conduct analogous to other cases involving state officials who served legal demands in the District and were subject to suit. The court dismissed ACC's state law claims, which ACC did not oppose, but allowed the federal constitutional claims to proceed.

Court Denied Injunction Against Enforcement of False Advertising Laws in APR Dispute

National Institute of Family and Life Advocates v. Bonta, 769 F. Supp. 3d 1109 (C.D. Cal. 2025)

Two Christian nonprofits challenged enforcement actions by the California Attorney General, seeking a preliminary injunction to prevent the state from prosecuting them under consumer protection laws for advertising "abortion pill reversal" as safe and effective. The plaintiffs argued that such enforcement would violate their First Amendment rights. The court denied the motion, concluding that the plaintiffs failed to show a likelihood of success on the merits.

The Central District of California determined that the speech at issue qualified as commercial speech and was therefore entitled to limited First Amendment protection. Applying the *Central Hudson* framework, which requires the Attorney General to demonstrate that the regulation on commercial speech directly advances a substantial government interest, the court found that the challenged statements were inherently misleading. The court noted a strong scientific consensus, including from the American College of Obstetricians and Gynecologists, that there is no credible evidence supporting abortion pill reversal's safety or efficacy. Prior federal courts considering similar speech had also found it to be misleading or unsupported by science.

The court rejected the plaintiffs' claim that the state's actions amounted to unlawful viewpoint discrimination. It held that a single consumer protection lawsuit against a third-party promoter was insufficient to establish a policy or pattern of selective enforcement. The court noted that the Attorney General's actions were aimed at preventing harm from deceptive medical advertising and were consistent with state authority under California's Business and Professions Code. Because the plaintiffs could not show that their speech was likely protected or that the Attorney General had violated viewpoint neutrality, the court found no grounds for preliminary injunctive relief.

ANTITRUST AND COMPETITION

Tenth Circuit Affirmed Dismissal of Antitrust Suit Over Continuing Education Access

Ass'n of Surgical Assistants v. Nat'l Bd. of Surgical Tech. & Surgical Assisting, 127 F.4th 178 (10th Cir. 2025)

The Association of Surgical Assistants (ASA) brought antitrust and tort claims against the National Board of Surgical Technology and Surgical Assisting (NBSTSA) and the Association of Surgical Technologists (AST). ASA alleged that the defendants conspired to deny it authorization to provide continuing education services necessary for surgical assistants to renew NBSTSA certifications, a service previously handled exclusively by AST. The district court dismissed the case for failure to state a claim, and the Tenth Circuit affirmed.

The court held that ASA's proposed product market, limited to continuing education for holders of NBSTSA certifications, was legally insufficient. ASA did not account for the availability of alternative certifications or the ability of certificate holders to recertify by examination. The court found ASA's market definition too narrow and unsupported by allegations of reasonable interchangeability or cross-price elasticity, as required in antitrust analysis.

The court also held that ASA failed to define a valid geographic market and did not allege facts showing that NBSTSA or AST had monopoly or market power. It further concluded that ASA failed to plausibly allege a conspiracy under the Sherman Act. The communications at issue were unilateral actions by NBSTSA, and ASA did not provide sufficient facts to suggest a coordinated agreement with AST. Finally, the court ruled that ASA did not suffer a cognizable antitrust injury. Its claimed harm, being excluded from NBSTSA's recertification program and incurring higher costs, did not flow from reduced competition and was not the kind of injury antitrust laws are designed to prevent. The court reiterated that antitrust law protects competition, not competitors. The Tenth Circuit affirmed the dismissal of all federal claims with prejudice and found no error in the district court's decision to decline supplemental jurisdiction over ASA's state tort claim.

District Court Vacated FTC's Non-Compete Rule for Exceeding Statutory Authority and Being Arbitrary and Capricious

Ryan LLC v. FTC, No. 3:23-cv-00148, 2024 WL 3879954 (N.D. Tex. Aug. 20, 2024)

Ryan LLC, joined by national and regional business associations, brought suit challenging the FTC's "Non-Compete Rule," which sought to invalidate most non-compete agreements nationwide. The plaintiffs argued that the FTC lacked statutory authority under the Federal Trade Commission Act to issue substantive rules governing unfair methods of competition and that the rule was arbitrary and capricious under the Administrative Procedure Act (APA).

Granting summary judgment to the plaintiffs, the U.S. District Court for the Northern District of Texas concluded that the FTC had overstepped its rulemaking powers. The court analyzed the FTC Act and found no clear congressional grant allowing the agency to enact binding substantive rules in this area. The court noted that Section 6(g) of the Act authorizes only procedural or "housekeeping" rules, not sweeping mandates like the one at issue. It also pointed to the absence of any penalty provision in Section 6(g) as further evidence that Congress had not authorized such rulemaking.

The court also faulted the rule under the APA's arbitrary-and-capricious standard. The FTC, the court said, failed to adequately consider less restrictive alternatives, ignored evidence supporting the potential benefits of non-competes, and relied on inconsistent data. The rule's broad, categorical ban on nearly all non-compete clauses lacked a reasoned explanation and did not sufficiently account for the reliance interests of employers and workers already operating under such agreements. The court vacated the rule in its entirety.

POLITICAL LAW AND LOBBYING

District Court Held IRS's "Facts and Circumstances" Test for § 501(c)(4) Political Activity Unconstitutionally Vague as Applied; Declined to Determine Exempt Status Without Further Briefing

Freedom Path, Inc. v. IRS, No. 20-cv-1349, 2025 WL 2779771 (D.D.C. Sept. 30, 2025)

Freedom Path, a nonprofit advocacy organization, sought a declaratory judgment that the standards the IRS applied in denying its Section 501(c)(4) tax-exemption application were unconstitutionally vague and that it qualified for exemption under a proper standard.

The U.S. District Court for the District of Columbia granted in part Freedom Path's motion for summary judgment, holding that both the Treasury regulation governing Section 501(c)(4) organizations and the IRS's reliance on Revenue Ruling 2004-06 are unconstitutionally vague as applied to Freedom Path's application for tax-exempt status. Freedom Path challenged the IRS's denial on the grounds that the agency's multi-factor "facts and circumstances" test for identifying political campaign intervention fails heightened First Amendment vagueness scrutiny. The court emphasized that the regulation's text appears to prohibit any political campaign intervention even though the IRS has long allowed some amount of political activity so long as it is not an organization's "primary activity." The court further noted that the agency has never articulated a clear definition of "primary activity," and that Revenue Ruling 2004-06 relies on an open-ended, 11-factor balancing test with no standards for how factors should be weighed. The court found that the combination of these uncertainties compounds the risk of arbitrary or discriminatory enforcement, which is underscored by findings in the 2013 Treasury Inspector General for Tax Administration Report regarding the IRS's past use of inappropriate criteria in reviewing Section 501(c)(4) applications.

Although the court agreed that the challenged standards were impermissibly vague, it declined to grant Freedom Path a declaration that it qualifies for Section 501(c)(4) status. Neither party provided a constitutionally sufficient alternative standard for determining political campaign intervention or for evaluating whether such activity constitutes an organization's "primary activity." The court also concluded that remand to the IRS was not possible because a longstanding appropriations rider prohibits the agency from issuing new guidance on Section 501(c)(4) standards and would require it to reapply the unconstitutional criteria.

The court ordered the parties to submit renewed motions proposing standards that are not unconstitutionally vague and that are appropriately rooted in the statutory and regulatory scheme, and constitutional principles, by which the court can adjudicate Freedom Path's entitlement to tax-exempt status.

District Court Narrowed Challenge to South Dakota Political Disclosure Law, Granting in Part and Denying in Part Motion to Dismiss

Students for Life Action v. Jackley, 746 F. Supp. 3d 668 (D.S.D. Aug. 27, 2024)

Students for Life Action (SFLA), a nonprofit engaged in national anti-abortion advocacy, sued South Dakota officials over a state law requiring disclaimers and donor disclosures on political advertisements. SFLA claimed the law violated the First and Fourteenth amendments because it applied to issue advocacy and discouraged both the group and its donors from speaking. It asked the court for declaratory and injunctive relief.

The court granted in part and denied in part defendants' motion to dismiss and allowed one narrow as-applied challenge to proceed. The judge found that SFLA had standing to sue, even though the state had not taken enforcement action. The court emphasized that the group's intention to continue similar advocacy, along with the potential chilling of donor activity, satisfied the injury-in-fact requirement. However, the court rejected SFLA's broader arguments that the law was facially overbroad or unconstitutionally vague.

The court did not reach the merits under exacting scrutiny but dismissed certain challenges to South Dakota's disclosure and disclaimer requirements, finding they served an important government interest in informing voters about the sources of election-related communications. It concluded that requiring groups to name their top five donors and file disclosure reports within 48 hours was not overly burdensome, given that the law applied only to communications about candidates or ballot issues. The court also rejected SFLA's vagueness challenge, interpreting "public office holders" to refer only to candidates and finding the term "concerning" sufficiently clear. However, it allowed a narrower as-applied challenge to proceed, based on concerns about unclear definitions of "contribution" and the lack of donor opt-out provisions. The ruling left most of the law intact but permitted a limited constitutional claim to continue.

Court Reverses Mandamus, Finds Ethics Commission Has Jurisdiction

N.M. Families Forward v. N.M. State Ethics Comm'n, 571 P.3d 70 (N.M. Ct. App. April 1, 2025)

New Mexico Families Forward (NMFF), a nonprofit advocacy organization, filed a petition for a writ of mandamus in state court to block an enforcement action brought by the New Mexico State Ethics Commission. The Commission had opened an investigation into NMFF's failure to disclose contributors to a digital ad campaign run during the legislative session. NMFF argued that the Commission lacked jurisdiction under state lobbying disclosure laws.

The district court granted mandamus relief, ordering the Commission to cease proceedings for lack of jurisdiction. On appeal, the New Mexico Court of Appeals reversed. The court concluded that the Commission had statutory authority to investigate alleged violations of lobbying disclosure laws.

The appellate court observed that mandamus is an extraordinary remedy and should not substitute for administrative review, particularly when jurisdictional questions are entangled with factual and statutory interpretation. The court also held that the Commission's statutory mandate was broad enough to encompass enforcement of campaign finance disclosures tied to lobbying expenditures. Accordingly, the court vacated the district court's writ of mandamus and remanded the case to the Commission for further proceedings.

FEC Concluded Nonprofit's Media Activities Were Exempt from Campaign Finance Regulation
Advisory Opinion 2025-04 (FEC Apr. 23, 2025)

The Federal Election Commission issued an advisory opinion concluding that the Government Accountability Institute (GAI), a Section 501(c)(3) nonprofit, may produce and distribute media content such as books, editorials, reports, documentaries, podcasts and television appearances without triggering campaign finance rules under the Federal Election Campaign Act. The Commission found that GAI's activities qualify for the "media exemption" and do not constitute contributions, expenditures or electioneering communications under federal law.

GAI described itself as a nonpartisan investigative organization that does not endorse or oppose candidates and does not donate to political committees. It conducts and shares investigations into public corruption and government accountability across a range of platforms, including major media outlets, websites and social media.

The Commission deadlocked 2–2 on two competing drafts but approved an advisory opinion reaching the same conclusion. The final opinion states that GAI's described activities qualify for the media exemption. It also notes that the opinion applies only as long as the relevant facts remain unchanged, and that any material change could alter the Commission's analysis.

Sixth Circuit Stayed Injunction Against Ohio Ban on Foreign National Political Spending, Including by Lawful Permanent Residents
OPAWL – Bldg. AAPI Feminist Leadership v. Yost, 118 F.4th 770 (6th Cir. 2024)

Several nonprofit organizations and individuals, including lawful permanent residents (LPRs), challenged an Ohio statute that prohibited political contributions and expenditures by all noncitizens. Plaintiffs claimed the law violated the First Amendment as applied to LPRs. The district court agreed and preliminarily enjoined the law's enforcement as applied to LPRs. Ohio appealed and sought an emergency stay of the injunction.

The Sixth Circuit granted the stay, holding that Ohio was likely to succeed on the merits of its appeal. The court found that the statute advanced a compelling state interest in preventing foreign influence in elections and that its inclusion of LPRs in the prohibition was likely constitutionally permissible for purposes of the stay. The court rejected the argument that the statute was overbroad, noting that LPRs represent a small fraction of the foreign-born population and that no evidence showed their spending on elections was disproportionate.

Assuming strict scrutiny applied, the court concluded that the law was narrowly tailored. Ohio demonstrated a direct interest in drawing bright-line rules against foreign electoral influence, and its choice to regulate all noncitizens, including LPRs, was supported by historical precedent and legislative discretion. The court also found that allowing political expenditures by LPRs could undermine election integrity and public trust, and that the administrative burdens of enforcing the law did not outweigh its constitutional validity.

The dissent argued that the statute failed both strict and intermediate scrutiny, noting the lack of empirical evidence linking LPR spending to election harm and citing less restrictive federal alternatives. The dissent also expressed concern over the statute's chilling effect on speech by nonprofits and citizens with joint accounts with LPRs. The court granted the stay, allowing Ohio to enforce the law against LPRs while the appeal proceeds.

PUBLIC RECORDS

DOJ FOIA Guide Clarified Scope of Exemption 4 for Nonprofit Information

U.S. Dep't of Justice, *Freedom of Information Act Guide*: Exemption 4 (Jan. 2025)

The Department of Justice's 2025 update to its *Freedom of Information Act Guide* reaffirms that Exemption 4 covers commercial or financial information that is obtained from a person and is confidential or privileged. The guide notes that this exemption includes, but is not limited to, trade secrets and business records, and may also apply to nonprofit and scientific information if it meets the standard.

According to the guide, courts interpret the terms "commercial" and "financial" broadly, without requiring that the information come from a profit-making entity. Information can qualify if it relates to business operations or serves a commercial function. The guide cites case law supporting the position that grant-related research data may be protected under Exemption 4 if it implicates commercial or economic interests. However, it also cites decisions where courts found that research designs, in themselves, do not qualify for protection absent a direct commercial application.

The document emphasizes that the burden is on agencies to demonstrate that Exemption 4 applies, and that general or unsupported claims are inadequate. Agencies must provide specific details showing that the records are commercial or financial and explain how disclosure would cause harm.

EMPLOYMENT AND BENEFITS

District Court Certified State Classes and Maintained FLSA Collective for Misclassification Claims Against Presidential Campaign

Wood v. Mike Bloomberg 2020, Inc., 746 F. Supp. 3d 185 (S.D.N.Y. 2024)

Field organizers for Mike Bloomberg's 2020 presidential campaign filed a class and collective action under the Fair Labor Standards Act (FLSA) and various state wage and hour laws, alleging they were misclassified as exempt employees and unlawfully denied overtime pay. The organizers moved for class certification under Rule 23 of the Federal Rules of Civil Procedure, which governs the requirements for bringing a case on behalf of a class, while the campaign sought to decertify the previously conditionally certified FLSA collective.

The Southern District of New York granted class certification for organizers in seven states and denied the campaign's motion to decertify the FLSA collective. The court found that all Rule 23 requirements were met. It held that the classes were sufficiently numerous, including the Minnesota class with 31 members, given the efficiencies of class treatment and the limited resources of individual plaintiffs. The central question, whether field organizers were properly classified as exempt under the administrative or executive exemptions, was common across all class members.

The court also found the proposed class representatives had claims typical of the class and were adequate to represent it, rejecting the campaign's arguments that challenges to their credibility or memory disqualified them. It concluded that common issues would predominate over individualized ones, and that class treatment was superior to individual litigation given the relatively modest potential recovery.

In denying decertification of the FLSA collective, the court ruled that the named plaintiffs and opt-in members were similarly situated. Although some factual variations existed, the campaign itself acknowledged that certain key issues could be resolved collectively. The court emphasized that, under Second Circuit precedent, even a single material common issue can justify proceeding as a collective action under the FLSA.

New York Court Denied Dismissal of Minimum Wage Suit Against Nonprofit Home Care Agencies

Lutfieva v. Servs. for the Aged, Inc., 2025 NY Slip Op 30598(U) (Sup. Ct. N.Y. Cnty. Feb. 19, 2025);
Lutfieva v. Servs. for the Aged, Inc., 2025 NY Slip Op 06390 (N.Y. App. Div. Nov. 20, 2025)

The Supreme Court of New York, New York County, denied a motion to dismiss a class action filed by Lutfieva against JASACare, JASA Home Care, and JASA Corp. Lutfieva alleged that the defendants violated New York Labor Law (NYLL) by failing to pay minimum wage, overtime, spread-of-hours pay, and other wages owed.

Defendants argued they were exempt from state wage orders under Labor Law § 652(3)(b) because they were certified nonprofitmaking institutions under the NYLL. The court rejected this argument, finding that such certifications do not automatically bar wage claims where the plaintiff alleges that minimum wage was not actually paid. The court declined to follow *Hichez v. United Jewish Council*, which required plaintiffs to exhaust administrative remedies before suing. It held that no such requirement exists in the statute and that exemption from wage orders depends on actual compliance with minimum wage laws.

The court also refused to dismiss claims against JASA Corp., concluding that the plaintiff plausibly alleged it was a joint employer based on shared control and overlapping leadership.

The Appellate Division, First Department, affirmed the trial court's denial of defendants' motion to dismiss. The court held that even if the defendants' nonprofit certifications qualified them for the wage-order exemption under Labor Law § 652(3)(b), the exemption applied only if defendants actually "paid and continued to pay" the statutory minimum wage. Plaintiffs alleged that they were paid for only 13 hours of a 24-hour shift, which was well below minimum wage, and the defendants failed to submit evidence disputing the allegations. The appeal was unanimously rejected, and the action will proceed to discovery on all claims.

IRS Updated Guidance on Contribution Limits, Eligibility and Reporting for 403(b) Plans in 2025
I.R.S. Pub. 571, Tax-Sheltered Annuity Plans (403(b) Plans) for Employees of Public Schools and Certain Tax-Exempt Organizations (2025)

The IRS's 2025 edition of Publication 571 provides updated guidance for employees of public schools and tax-exempt organizations participating in 403(b) plans. Reflecting changes from the SECURE 2.0 Act, the publication outlines new contribution limits, eligibility rules, and reporting requirements.

For 2025, the elective deferral limit has increased to $23,500, with additional catch-up contributions available for employees age 50 or older and for certain long-tenured employees. The overall cap on annual additions, including elective, nonelective, and after-tax contributions, has risen to $70,000. The publication also explains how to calculate the maximum allowable contribution (MAC), factoring in annual additions, elective deferrals and years of service.

Special rules are addressed for church employees, ministers and self-employed individuals. The guide clarifies tax treatment of Roth and after-tax contributions, reporting obligations, and conditions for avoiding penalties on early withdrawals. Rollovers to and from other retirement accounts are also covered in detail. In addition to explanatory text, the IRS includes worksheets, tables, and examples to help plan participants and administrators apply the rules accurately and avoid excess contributions or penalties.

INTELLECTUAL PROPERTY

Court of Appeals Reversed Denial of TCPA Motion in Trademark Dispute Between Political Associations

Cohen v. Tex. Young Republican Fed'n, 2024 Tex. App. LEXIS 6071 *(Tex. App.—Dallas 2024)*

Cohen appealed the denial of his motion to dismiss claims brought by the Texas Young Republican Federation (TYRF) under the Texas Citizen's Participation Act (TCPA). TYRF had sued Cohen and others for common-law trademark infringement and dilution of the mark "Young Republicans," alleging that Cohen and former TYRF affiliates had launched a competing group called the "Young Republicans of Texas," an unincorporated nonprofit association, with the intent to confuse the public. The trial court denied Cohen's motion as to the trademark and dilution claims but dismissed TYRF's breach of contract and tortious interference claims.

The Court of Appeals for the Fifth District of Texas reversed the trial court's decision. It found that the TCPA applied to TYRF's claims because they related to Cohen's exercise of free speech and association. TYRF failed to prove that the commercial-speech exemption applied, as it presented only speculative evidence that Cohen's group would eventually sell goods or services.

The appellate court also held that TYRF did not present a prima facie case against Cohen personally. The evidence referenced confusion stemming from the use of the "Young Republicans" name by a group, but there was no specific evidence that Cohen individually used the mark. As TYRF's affidavits and evidence did not tie the allegedly infringing conduct to Cohen himself, the court concluded that the claims failed under the TCPA's burden-shifting framework. Accordingly, the court reversed the denial of the motion to dismiss and remanded the case for further proceedings, ordering TYRF to pay Cohen's appellate costs.

Second Circuit Rejected Fair Use Defense for Nonprofit Digital Lending of Copyrighted Books

Hachette Book Grp., Inc. v. Internet Archive, 115 F.4th 163 (2d Cir. 2024)

A Controlled Digital Lending (CDL) program infringed the copyrights of four major book publishers by scanning and distributing full digital copies of 127 books without permission. The Internet Archive, a nonprofit, argued its use qualified as fair use under 17 U.S.C. § 107, citing its one-to-one owned-to-loaned ratio and nonprofit mission.

The court rejected the fair use defense. It held that the Internet Archive's use was not transformative because the digital copies served the same purpose as the original books and acted as substitutes for both print and eBook versions. The court acknowledged that the Archive did not profit directly from the Free Digital Library and ruled that its use was not commercial, but emphasized that nonprofit status alone did not favor fair use, particularly where the use lacked transformation.The court found that the Archive copied and made available entire works to the public without authorization, effectively supplanting the market for licensed eBooks. It concluded there was clear, self-evident market harm, especially to the growing library eBook licensing market, and warned that widespread adoption of Internet Archive's model could seriously undercut incentives for authors and publishers. All four statutory fair use factors weighed against Internet Archive. The Second Circuit upheld the permanent injunction barring the Archive from distributing copyrighted books that are available for electronic licensing.

California District Court Ruled Privately Authored Standards Incorporated by Reference Remain Copyright-Protected

Nat'l Fire Prot. Ass'n v. UpCodes, Inc., 753 F. Supp. 3d 933 (C.D. Cal. 2024)

The National Fire Protection Association (NFPA), a nonprofit standards development organization, brought a copyright infringement suit against UpCodes, Inc., a for-profit company that published digitized versions of NFPA's standards, many of which had been incorporated by reference (IBR) into state and local laws. NFPA sought summary adjudication of its copyright ownership and infringement claims, while UpCodes moved for summary judgment, asserting fair use and that NFPA's standards were uncopyrightable because they had been incorporated into the law.

The Central District of California held that NFPA had established a prima facie case of copyright infringement. It rejected UpCodes' reliance on the government-edicts doctrine, clarifying that copyright protection does not vanish merely because a standard has been IBR-ed. Applying *Georgia v. Public.Resource.Org*, the court emphasized that authorship, not the binding nature of the content, controls whether the work is copyrightable. Because NFPA is a private entity lacking lawmaking authority, its works remain protected under copyright law.

The court also rejected UpCodes' fair use defense. The court found that UpCodes' use was not transformative, that it substituted for NFPA's commercial offerings, and that its use was clearly commercial. It further held that UpCodes had posted entire copyrighted works, including material not adopted into law, which weighed against fair use. Finally, the court determined that UpCodes' actions likely caused market harm and disrupted NFPA's licensing model. Summary judgment was denied for UpCodes and granted in part for NFPA.

ADMINISTRATIVE LAW

District Court Temporarily Enjoined OMB Memorandum Pausing Federal Grant Disbursements Nat'l
Council of Nonprofits v. OMB, 763 F. Supp. 3d 13 (D.D.C. 2025)

Several nonprofit organizations sued the Office of Management and Budget (OMB) and its acting director, challenging a memorandum that ordered a temporary pause on disbursements of federal financial assistance related to certain executive orders. The memorandum, M-25-13, instructed agencies to halt activity on funding tied to foreign aid, diversity programs, environmental initiatives, and related areas. Plaintiffs claimed the directive was issued without proper process, violated the APA, infringed on the First Amendment, and exceeded OMB's statutory authority.

The U.S. District Court for the District of Columbia issued a limited administrative stay. While not ruling on the merits, the court found that maintaining the status quo was necessary to allow time for full briefing and a hearing on the plaintiffs' motion for a temporary restraining order. The court acknowledged the risk of irreparable harm to nonprofit organizations and their beneficiaries if existing grant funding was disrupted.

The court limited the stay to the disbursement of federal funds under open awards and left other parts of the memorandum, such as those relating to new awards or broader agency reviews, untouched. The stay was scheduled to expire a few days later, after an expedited hearing could be held. On February 25, 2025, the court granted a preliminary injunction adopting similar language, enjoining the government from implementing the memorandum "with respect to the disbursement of Federal funds under all open awards."

The plaintiffs requested clarification of the preliminary injunction's scope, which the court denied on March 14, 2025. On April 25, 2025, the government appealed the injunction to the D.C. Circuit, and on May 12, 2025, the district court stayed further proceedings pending the appeal.

District Court Enjoined Education Department's Grant Terminations Under APA but Rejected Constitutional Claim
American Ass'n of Colleges for Teacher Education v. McMahon, 770 F. Supp. 3d 822 (D. Md. 2025)

Three nonprofit membership organizations representing teacher education programs challenged the U.S. Department of Education's termination of federal grants awarded under the Teacher Quality Partnership, Supporting Effective Educator Development, and Teacher and School Leader Incentive programs. The plaintiffs alleged that the terminations, which were carried out in response to Executive Order 14151 directing federal agencies to eliminate diversity, equity, and inclusion related programs, violated both the Fifth Amendment's Due Process Clause and the APA.

The District of Maryland granted in part and denied in part plaintiffs' motion for preliminary injunction. The court held that the plaintiffs lacked a clear likelihood of success on their Fifth Amendment claim because they failed to show that the terminations were directly caused by Executive Order 14151.

However, the court found a strong likelihood of success on the APA claim. It concluded the Department's reliance on "agency priorities" under 2 C.F.R. § 200.340(a)(4) failed to comply with the rulemaking procedures mandated by the General Education Provisions Act (GEPA). Specifically, GEPA requires notice-and-comment procedures for changes to agency priorities affecting grants, which the Department had not followed.

The court also found the Termination Letters vague and unsupported by any individualized assessment or evidentiary findings, thus rendering them arbitrary and capricious under the APA. Noting irreparable harm to teacher training programs and the public interest in legal compliance, the court enjoined the Department from terminating the grants in the manner found unlawful. The injunction required reinstatement of terminated awards and imposed a nominal bond of $10.

The Fourth Circuit granted the federal government's motion to stay the district court's preliminary injunction pending appeal.

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