

Prof. Evelyn Brody
Mon. & Wed., 11:45 – 1:10 pm.

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NONPROFIT LAW COURSE SYLLABUS: FALL 2013

Course Coverage:

This is a course in the legal issues raised in governing a nonprofit organization, primarily a charity. (As used in the law, the term “charity” is much broader than social service entities, including such institutions as hospitals, colleges, museums, environmental advocacy groups, and churches.) We will focus on the appropriate considerations of State corporate and trust law and Federal tax law, as well as some State tax issues and Federal election law issues if we have time. We will also study First Amendment protections relating to association and charitable solicitation. In our coverage of the governing board’s fiduciary duties, you will learn how to read nonprofit financial statements. More general legal issues implicated in running a nonprofit, such as employment law and torts, are generally beyond the scope of this course.

Class Assignments:

Because the law in this area is so rapidly evolving, both in prescription and practice, we will rely heavily on works-in-progress and materials available on the Web. Initially, you need:

1. **Nonprofit Governance Guide:** A DESKTOP GUIDE FOR NONPROFIT DIRECTORS, OFFICERS, AND ADVISORS (John C. Wiley & Co. 2006), by Jack Siegel (full disclosure: my husband).

Note: A **CD-ROM (2006) contains primary sources** – cases, statutes and regulations, and other material. See index to assigned material, by class number, after this Syllabus.

2. My photocopied set of **SUPPLEMENTAL MATERIAL** (additional authorities, forms, commentary, and news stories), numbered by Assignment.

Note: You can access the assigned **Internal Revenue Code** sections either by reading the Supplementary Material, which begins with excerpts (“**Code & Regs**”), or by clicking the following link from the IRS, for a searchable Title 26, Internal Revenue Code (on the Cornell website): <http://www.irs.gov/taxpros/article/0,,id=98137,00.html>.

From that IRS link, you can also get **Treasury Regulations and other authorities**.

3. **ALI Nonprofit Principles Draft:** We will read selections from drafts I’m preparing as Reporter for the American Law Institute’s project on Principles of the Law of Charitable Nonprofit Organizations. The project is only about 60% through (and even the approved drafts will be revised), so suggestions will be most timely and welcome! Current versions of all the draft chapters will be on library Reserve; the 4 Tentative Drafts are also on Westlaw and LEXIS.

4. **Course Website:** This Syllabus is current as of July 23, 2013. I might post additional material at <http://www.kentlaw.iit.edu/current-students/online-corse-materials>. The Course Webpage also has this Syllabus, with its hot links. Major sources are:

<http://www.irs.gov/Charities-&-Non-Profits> (for all types of tax-exempt organizations)

<http://www.charitygovernance.com> (for events through mid-2011; maintained by Jack Siegel)

http://www.cyberdriveillinois.com/departments/business_services/business_not-for-profit/home.html (Illinois Secretary of State; focus on “Not-for Profit Corporations”)

<http://illinoisattorneygeneral.gov/charities/index.html> (Ill. Attorney General, Charities Division)

http://www.law.columbia.edu/center_program/ag/policy/CharitiesProj (Columbia Law School)

<http://philanthropy.com/section/Todays-News/284/> (links to news stories on nonprofits)

<http://www.guidestar.org> (recently filed IRS Form 990s for charities) (our class has enhanced free registration); Forms 990 back to 2003 are available from Economic Research Institute at: <http://www.eri-nonprofit-salaries.com/index.cfm?FuseAction=NPO.Search&trkid=292-49>

<http://lawprofessors.typepad.com/nonprofit/> (academics’ commentary on current developments)

<http://ncpl.law.nyu.edu/ncplsearch> (National Center on Philanthropy and the Law, NYU School of Law – excellent searchable bibliography)

Buddy System and Assignments, Attendance, Preparation, Exam, and Grade:

To make preparing for class more effective, you must form into groups of two or three. Let me know who your co-counsel are (if you wish, see me and I'll pair you off). Your group should meet regularly to discuss the material. Starting with our second class, your group must SUBMIT 2 or 3 BRIEF COMMENTS OR QUESTIONS (no answers required!) about the assignment, no later than one hour before EACH CLASS – these will help the class discussion.

The grade will be based primarily on your exam. The exam will be 3 hours long, and completely open-book. (For more info, see the end of this Syllabus.) I reserve the right to bump up your grade one notch for consistently good questions and to bump down your grade if you consistently neglect to send in questions. Separately, I reserve the right to increase your grade one notch for productive class participation. You may take this course pass/fail.

Get organized; *keep up*; and contact me with questions (preferably with your co-counsel). If you're unprepared, at least come to class, but please let me know.

LEGAL LANDSCAPE FOR NONPROFIT ORGANIZATION

1. Overview of the Legal Landscape for Nonprofit Organizations

As you try to get your hands around “the nonprofit sector,” think about whether the concept of three sectors (government, business, and nonprofit) makes sense. Who has done and does more “good” – the Gates Foundation or Microsoft? (Steve Jobs never saw the social need to focus his efforts on organized philanthropy as opposed to Apple.)

Guide: Forward: pp. xxxi-xxxiv; Chapter 1, **Setting the Stage**: pp. 1-18; Chapter 2, **Before Signing On**: pp. 19-22.

Supp.: For an idea of what we can readily learn about a charity, skim the excerpts from the June 30, 2009 Form 990 of Feed the Children (the Core Form and relevant portions of Schedule O (explanations)). Note that we’re using the 2009 return because of governance issues that we will examine in later classes – Feed the Children has since cleaned up!

Web: Table III from the Joint Committee report describing federal law on tax-exempt organization (JCX-53-07, July 19, 2007), at pp. 33-34 of <http://www.jct.gov/publications.html?func=startdown&id=1411>).

For statistical information drawn from federal tax filings, see <http://www.urban.org/UploadedPDF/412674-The-Nonprofit-Sector-in-Brief.pdf>. For data on Illinois charities, go to: <http://nccsdataweb.urban.org/PubApps/profileDrillDown.php?state=IL&rpt=RPC>

When you hear “charity,” do you think “redistribution”? See <http://www.washingtonpost.com/blogs/wonkblog/wp/2013/05/30/only-a-third-of-charitable-contributions-go-the-poor/>.

See the chart of 50 largest charities (by revenue), at <http://www.csmonitor.com/Business/Guide-to-Giving/America-s-Top-50-charities-How-well-do-they-rate>.

Read Put Barber, “Five Tips and a Warning” – particularly the warning –at <http://nccsdataweb.urban.org/PubApps/nonprofitfaq.php?i=520&c=21>.

Much other advice is available from a long list at <http://nccsdataweb.urban.org/PubApps/nonprofitfaq.php>.

Does the world needs a new charity to respond to every problem (think Superstorm Sandy, the Newtown shootings, the Boston Marathon bombings)? See <http://www.irs.gov/Charities-&-Non-Profits/Charitable-Organizations/Disaster-Relief-Resources-for-Charities-and-Contributors>.

2. Nonprofit Associations as Expressive Activity: Constitutional and Policy Issues

Guide: Chapter 3, **Organization Basics**, part (c), “Members,” at pp. 43-51; skim Chapter 8, **Other Benefits**, “Federal Funding for Faith-Based Organizations,” at pp. 403-10.

Supp.: *State ex Rel. Grant v. Brown*, 313 N.E.2d 847 (Ohio 1974), and *Association for the Preservation of Freedom of Choice v. Shapiro*, 174 N.E.2d 487 (N.Y. 1961); excerpts from *Boy Scouts of America v. Dale*, 530 U.S. 640 (2000) (also on CD-ROM, under Ch. 3\Associative Rights).

Web: See the Boy Scouts of America May 2013 changes to membership requirements, distinguishing between gay members (OK) and gay adult leaders (not [yet?] OK):
<http://www.scouting.org/sitecore/content/MembershipStandards/Resolution/FAQ.aspx>; news story on corporate versus religious sponsors at http://www.washingtonpost.com/local/boy-scouts-shift-on-gay-youth-ban/2013/06/01/c99d6312-c87b-11e2-9f1a-1a7cdee20287_story.html?hpid=z1.

For fallout from Susan B. Komen Foundation’s (subsequently reversed) decision to stop funding Planned Parenthood, see <http://www.npr.org/blogs/health/2012/06/01/154135526/planned-parenthood-controversy-hangs-over-komens-fundraising-races>; and http://www.washingtonpost.com/national/health-science/komen-cancels-3-day-walk-in-dc-six-other-cities-in-2014/2013/06/04/df9b50dc-cd4b-11e2-9f1a-1a7cdee20287_story.html?hpid=z3. For recommendations on how charity leaders can avoid “getting Komened,” see Michael Peregrine’s piece at <http://www.mwe.com/files/Publication/36e00978-7eea-411f-9a09-3f76dc7a53f8/Presentation/PublicationAttachment/80853d9d-04b0-4704-8948-438a8ef115d5/Steps-Charity-Leaders-Can-Take.pdf>?

“Federated” charities suffer particular associational issues, such as when a church schisms and a dispute arises over property ownership. (If you’re interested, see the application of state franchise law in *Girl Scouts of Manitou Council, Inc. v. Girl Scouts of America* (7th Cir., May 31, 2011), and commentary at <http://www.gsmanitou.org/who-we-are/update-on-council-jurisdiction>. See comment at http://www.nixonpeabody.com/linked_media/publications/Nonprofit_Aler_t_06_08_2011.pdf.) See also Mary Elizabeth Williams, *The Right’s Latest Target: Girl Scout Cookies*, at http://www.salon.com/2011/05/18/girl_scouts_usa_abortion_controversy/.

3. Charitable and Nonprofit Purposes

- Web: Read Article 3 (Purposes and Powers) in the Illinois Not-for-Profit Corporation Act, available on the Secretary of State's website (go to http://www.cyberdriveillinois.com/departments/business_services/incorporation/nfp_instructions.html and click "list of the purposes" for 805 ILCS 105 / General Not-for-Profit Corporation Act of 1986).
- Supp.: *Marsh v. Frost National Bank*, 129 S.W.3d 174 (Tex. App. 2004).
- Guide: Chapter 6, **Tax Exemption**: Introduction and "Tax Exempt Entities," at pp. 219-29; and "Terrorism and the Non-Profit Sector," at pp. 325-27.

Illegal purposes and purposes against public policy:

Consider the famous 1867 Massachusetts high court case *Jackson v. Phillips*, construing the bequests of a testator who died in 1861, which upheld as charitable a trust to advocate for emancipation and to support fugitive slaves. The court acknowledged: "Gifts for purposes prohibited by or opposed to the existing laws cannot be upheld as charitable, even if for objects which would otherwise be deemed such. The bounty must, in the words of Sir Francis Moore, be 'according to the laws, not against the law,' and 'not given to do some act against the law.' . . .

"A charity, in the legal sense, may be more fully defined as a gift, to be applied consistently with existing laws, for the benefit of an indefinite number of persons, either by bringing their minds or hearts under the influence of education or religion, by relieving their bodies from disease, suffering or constraint, by assisting them to establish themselves in life, or by erecting or maintaining public buildings or works or otherwise lessening the burdens of government."

The court ruled: "The manner stated of putting an end to slavery is not by legislation or political action, but by creating a public sentiment, which rather points to moral influence and voluntary manumission. . . . Giving to the bequest that favorable construction to which all charitable gifts are entitled, the just inference is that lawful means only are to be selected, and that they are to be used in a lawful manner."

The court also found a construction that saved the purpose of aiding fugitive slaves: "To supply sick or destitute fugitive slaves with food and clothing, medicine and shelter, or to extinguish by purchase the claims of those asserting a right to their service and labor, would in no wise have tended to impair the claim of the latter or the operation of the Constitution and laws of the United States; and would clearly have been within the terms of this bequest."

However, the court also ruled, though: "It is quite clear that the bequest in trust to be expended 'to secure the passage of laws granting women, whether married or unmarried, the right to vote, to hold office, to hold, manage and devise property, and all other civil rights enjoyed by men,' cannot be sustained as a charity."

- Web.: Denial letters for pro-polygamy organizations:

IRS Determination Letter 2013-23-025, at <http://www.irs.gov/pub/irs-wd/1323025.pdf>; and Determination Letter 2013-25-015 at <http://www.irs.gov/pub/irs-wd/1325015.pdf>.

Note: We also consider the definition of charity for purposes of federal tax-exemption in **Assignment 4**, and focus on other aspects of tax exemption throughout the semester.

CD-ROM: Under Ch. 6, skim *Bob Jones University v. U.S.*, 461 U.S. 574 (1983) (at \Charitable), especially pp. 11-13 (majority opinion) and pp. 20-21 (Powell's famous concurrence).

Note: Bob Jones III apologized for and announced a change in Bob Jones University's racial policy in 2000 (see <http://www.bju.edu/communities/ministries-schools/position-statements/race-statement.php>), but the university still has not obtained (sought?) federal tax exemption. It does, though, have charitable affiliates, notably a museum and scholarship funds, to which deductible contributions may be made (see <http://bjugiving.giftlegacy.com/?pageID=1003>).

Web: [We examine the federal tax requirements for charity more thoroughly in **Assignment 4** (see particularly the ruling on Project Veritas).]

As to terrorism, see Ford Foundation's grant-making policy, at <http://www.fordfoundation.org/pdfs/grants/grant-application-guide.pdf>. If you're interested in an unusual criminal conviction, based on a false tax-exemption application and Forms 990, see *U.S. v. Mubayyid*, 658 F.3d 35 (1st Cir. 2011).

See Determination Letter 2010-33-039 (school lacking an adequate racial nondiscrimination policy), at <http://www.irs.gov/pub/irs-wd/1033039.pdf>.

Read the IRS's denial of § 501(c)(3) status to a social networking site, Determination Letter 201125045 (March 30, 2011, released June 24, 2011), at <http://www.irs.gov/pub/irs-wd/1125045.pdf>.

Read the IRS's denial of (c)(3) status to a synagogue, Determination Letter 201325017 (March 28, 2014, released June 24, 2013), available at <http://www.irs.gov/pub/irs-wd/1325017.pdf>.

4. Federal Tax Exemption: Basic I.R.C. § 501(c)(3) Requirements

Guide: Recall the first part of Chapter 6, **Federal Tax Exemption**, pp. 219-29, which we covered in **Assignment 3**. Continue with pp. 229-33 (organizational and operation test for 501(c)(3)'s); pp. 234-38 ("Obtaining Tax-Exempt Status"); and pp. 317-22 ("Reporting Requirements").

Code&Regs: Internal Revenue Code § 501(c), particularly subsection (3); and Treas. Reg. § 1.501(c)(3)-1(a), (b), (c) & (d).

Web: On the IRS's website, explore <http://www.irs.gov/Charities-&-Non-Profits/Charitable-Organizations/Life-Cycle-of-a-Public-Charity>. Here you will find links to the application form, Form 1023; annual information returns (Forms 990, 990-EZ, and 990-PF); and Forms 990-T (Unrelated Business Income Tax) (which we cover in **Assignment 24**) and 1120-POL (we cover political activity in **Assignments 22 & 23**), as well as Form 8283 (covered in **Assignment 18**). See also **Assignment 14**, where we'll focus on the governance questions on the Form 990 redesigned in 2008.

For a flowchart of the exemption-determination process, go to: http://www.irs.gov/pub/irs-tege/eo_determ_process080409.pdf. Skim the compliance guide that the IRS sends to all successful charities (a separate one is prepared for private foundations), at <http://www.irs.gov/pub/irs-pdf/p4221pc.pdf>; the guide for exempt orgs other than charities is at <http://www.irs.gov/pub/irs-pdf/p4221nc.pdf>.

Much more interesting, though – and the way we'll proceed in class – is to explore an actual exemption application. Reportedly because of a FOIA request, the IRS released the documents relating to the successful application of Project Veritas (self-described muckraking journalist James O'Keefe's group); go to <https://www.documentcloud.org/documents/96774-project-veritas.html> (a PDF is at <https://s3.amazonaws.com/s3.documentcloud.org/documents/96774/project-veritas.pdf>).

For information on hundreds of thousands of automatic revocations (starting in 2011) for failure to file a Form 990-N (the "e-Postcard"), as required by 2006 legislation, go to <http://www.irs.gov/Charities-&-Non-Profits/Automatic-Revocation-of-Exemption>.

Supp.: Does the IRS too readily grant (c)(3) exemption? At the same time, the IRS faces complaints about delayed exemption determinations (see more in **Assignment 23**); see <http://www.reuters.com/article/2013/06/03/us-usa-irs-applications-insight-idUSBRE95210L20130603>. For criticism of the process (to which we return in **Assignment 23**), see Streckfus in Supp.

5. The Corporate Form: Registration and Reporting.

Guide: Chapter 3, **Organization Basics**: “The Regulators–State Attorneys General,” at pp. 51-54; and “Organizational Documents”, “Meetings”, and “Major Events,” at pp. 56-74.

Web: Go to the Charities Bureau on the Illinois Attorney General’s website, at <http://illinoisattorneygeneral.gov/charities/index.html>.

Read: (1) FAQs;
(2) Filing Requirements;
(3) Registration and Annual Report Forms;
(4) Rules and Statutes (just skim the Charitable Trust Act; recall from **Assignment 3** that the Not-for-Profit Corporation Act is on the Secretary of State’s website);
(5) Forming a Charitable Organization;
(6) Volunteer Board Members of Illinois Not-for-Profit Orgs.

Go to the Secretary of State’s website at http://www.cyberdriveillinois.com/departments/business_services/business_not-for-profit/home.html, and click “Business Organizations Acts” – Nonprofit Corporations are the second category. Click on General Not-for-Profit Corporation Act and read the Illinois requirements for the articles of incorporation. For publications, go to www.cyberdriveillinois.com/publications/business_services/nfp.html, and read “Articles of Incorporation,” “A Guide for Organizing Not-for-Profit Corporations, and “Not-for-Profit Annual Report.”

For Massachusetts’ database of regulated charities (with a homepage sidebar of links for One Fund Boston, created after the Boston Marathon bombings), go to <http://www.mass.gov/ago/doing-business-in-massachusetts/public-charities-or-not-for-profits/public-charities-annual-filings/public-charities-annual-filings.html>.

6. Organizational Form: Comparing Charitable Trusts and Nonprofit Corporations

- Statute: Read Article 8 (Directors and Officers) in the Illinois Not-for-Profit Corporation Act, available at <http://www.ilga.gov/legislation/ilcs/ilcs3.asp?ActID=2280&ChapterID=65>.
- Guide: Chapter 3, **Organization Basics**: pp. 23-31 (choice of form; the players); “Board Committees,” at pp. 31-35; and pp. 35-43 (directors and officers).
- CD-ROM: Under Ch. 4\Director Removal, *Oberly v. Kirby*, 592 A.2d 445 (1991).
- Supp: For analysis of the ALI project and the Model Nonprofit Corporation Act, Third Edition (2008), see excerpts from Brody, “The Ambitions And Limitations of U.S. Nonprofit Law Reform Projects” (2012), at 537-48. Note that we will spend time in future classes addressing in detail many of the issues raised in my article.
- Web: Take advantage of the Ford Foundation’s laudable amount of disclosure (at <http://www.fordfoundation.org/about-us/governance>), and explore the links to the Foundation’s Charter/Articles of Incorporation, Bylaws, Committee Charters and Membership, and procedures for the receipt, retention and treatment of complaints regarding accounting, internal accounting controls, and auditing matters.

GOVERNANCE: STATE FIDUCIARY LAW AND FEDERAL TAX RULES

7. Fiduciary Duties in General

(We will finish this class next time.)

- Guide: Chapter 4, **Legal Duties & Obligations**: pp. 77-99. In our class discussion, we will focus on the four situations on pp. 88-99.
- CD-ROM: Under Ch. 4\Breach of Duties: *Stern v. Lucy Webb Hayes National Training School*, 381 F. Supp. 1003 (D.D.C. 1974) (known popularly as the “Sibley Hospital Case”).
- Supp.: ALI, excerpts from draft §§ 300 and 315.
- Web: See Michael Wyland’s criticisms of the governance portion of the Freeh report on Penn State (regarding the Sandusky scandal) at <http://www.nonprofitquarterly.org/governancevoice/20779-freeh-report-on-penn-state-provides-little-guidance-on-nonprofit-governance.html>. (The Freeh report and other material are also available at <http://progress.psu.edu/the-freeh-report>.) For an uncomfortable story about Penn State’s general counsel, see http://articles.philly.com/2012-07-26/news/32849268_1_grand-jury-jerry-sandusky-sandusky-investigation.

Note: In May 2013, the *Chronicle of Higher Education* reported:

“Major governance changes that Pennsylvania State University’s Board of Trustees approved this month are likely to improve the university’s creditworthiness, according to a report released last week by Moody’s Investors Service.

“The governance reforms were a response to some of the problems that may have exacerbated the scandal sparked by Jerry Sandusky, the former football coach convicted last year of more than 40 counts of sexual abuse against young boys.

“Among the board’s changes, adopted on May 3, were making the state’s governor and the university’s president two out of six ex officio board members who may not vote; increasing the number of trustees required for a quorum; imposing term limits on all but the ex officio members; and ‘enhancing’ the board’s conflict-of-interest policy.”

8. Exploring the Duty of Loyalty: Conflicts of Interest

(We will finish both Assignment 7 and Assignment 8.)

- Statute: In Article 8 (Directors and Officers) in the Illinois Not-for-Profit Corporation Act, available at <http://www.ilga.gov/legislation/ilcs/ilcs3.asp?ActID=2280&ChapterID=65>, read § 108.05(c) (compensation) and § 108.80 (prohibited loans).
- Guide: Chapter 4, **Legal Duties and Obligations**: “Another Look at Conflicts of Interest,” at pp. 116-28.
- Supp.: Rosenthal, “Lessons from the Report to the Board of Regents of the Smithsonian Institution” and materials (also available, with a 2009 GAO report, under “About the Board – Other Reading – Governance” at www.si.edu/governance).
- Web: Ostrower’s 2007 “Findings on Financial Transactions between Nonprofits and Board Members,” at pages 7-11 of http://www.urban.org/UploadedPDF/411479_Nonprofit_Governance.pdf. Continue exploring the Ford Foundation’s website – at <http://www.fordfoundation.org/about-us/governance> – specifically, its Standards of Independence, Trustee Code of Ethics, Staff Code of Conduct and Ethics, and Procedures for Approving Affiliated Grants.

For proposals to disallow or limit board pay, see e.g., <http://www.mass.gov/ago/news-and-updates/press-releases/2011/senate-passes-amendment-to-limit-compensation.html> – also, click the link and read the AG’s April report. A 2012 report on hospital executive compensation available at <http://doj.nh.gov/media-center/press-releases/2012/20120702-nhcpps-report-hospital-compensation.htm> noted: “New York Governor Andrew Cuomo earlier this year signed an executive order that placed a \$199,000 limit on the amount of state money that certain non-profits can use towards executive compensation.” Other states, including Illinois, are also considering compensation limits on charities that receive a minimum of state contracts or other funding.

If time, we’ll discuss Boyd, *Lawyers’ Service on Nonprofit Boards: Managing the Risks of an Important Community Activity*, available at http://www.nyemaster.com/userdocs/BLT_NovDec08_boyd.pdf.

9. Federal Tax Prohibitions on Private “Inurement”

(Note: This **Assignment 9** could take up to two classes.)

Private Inurement and Private Benefit:

Guide: Chapter 6, **Federal Tax Exemption**: “Private Inurement,” at pp. 238-40.

Code&Regs: See Treas. Reg. § 1.501(c)(3)-1(c)(2) and -1(d)(1)(ii) & (iii) (private benefit prohibition); compare I.R.C. § 4958, which we’ll focus on next.

Web: *Rameses School v. Commissioner* (just skim the burden of proof), at <http://www.ustaxcourt.gov/InOpHistoric/Rameses.TCM.WPD.pdf>.

Intermediate Sanctions:

Guide: Chapter 6, **Federal Tax Exemption**, “Intermediate Sanctions,” at pp. 240-41, 243-60, and 261-63; and “Watch Out for Question 89b” [renumbered in the 2008 Form 990 redesign], at pp. 318-19.

Chapter 12, **Indemnification and D&O Insurance**, tax issues, at pp. 625-27 (just skim the private foundation issues on pp. 625-26).

Code&Regs: I.R.C. § 4958 and Treas. Reg. § 53.4958-3 (defining disqualified persons), and -6 (presumption of prudence).

Supp.: Return to Feed the Children’s 2009 Form 990, in the Supplement for **Assignment 1**, and read Part VI of the Core Form and the explanations on the process for setting compensation in Schedule O.

News stories on executive compensation. See also http://www.nytimes.com/2013/06/18/nyregion/nyu-gives-stars-loans-for-summer-homes.html?hp&_r=0#comments.

“Grassley Seeks to End Reasonable Compensation Safe Harbor.” See ASAE’s letter to Senator Grassley, at <http://www.asaecenter.org/files/FileDownloads/PublicPolicy/Comments%20on%20Grassley%20HC%20Amendments%209-23-09.pdf>.

Web: Consulting companies provide compensation studies; also, Economic Research Institute for a fee prepares salary surveys based on comparables, as explained at <http://www.eri-nonprofit-salaries.com/index.cfm>).

Interaction Between § 501(c)(3) and § 4958:

- Guide: Chapter 6, **Federal Tax Exemption**, “Where Is the Line?,” pp. 241-42.
- Regs: Treas. Reg. § 1.501(c)(3)-1(f), in Code & Regs in Supp.
- Web: PLR 2011-15-025 (revoking exemption of a scholarship organization on grounds it was a sham and operated for the benefit of its president and wife; also held them liable for both the 25% and 200% excess benefits tax), at <http://www.irs.gov/pub/irs-wd/1115025.pdf>.

10. Understanding Nonprofit Financial Statements

(Jack Siegel will guest teach this – I'll let you know if he wants different or additional reading.)

Guide: Chapter 5, **Financial Statements, Internal Controls, and Sarbanes-Oxley**: pp. 137-81 (accounting rules and audited financial statements); pp. 184-88 (intro to internal controls); pp. 195-98 (conclusion); and pp. 206-15 (“Sarbanes-Oxley”).

Web: See the Art Institute of Chicago’s 2012 audited financial statements at: http://www.artic.edu/sites/default/files/fy12_fs_0.pdf.

See Jack Siegel’s “Ten Financial Controls that Every Charity Should Put in Place”:

www.charitygovernance.com/charity_governance/2007/10/ten-financial-c.html

NOTE: Contracts with funders (governmental or private, such as from foundations) can be the source of additional financial “regulation.” Government funding, in particular, can result in an audit of the use of the funds. While contracting issues are beyond the scope of this course, see, for example, the Justice Department’s June 2013 decision to freeze over \$19 million in funding to Big Brothers Big Sisters of America. This audit, available at <http://www.justice.gov/oig/reports/2013/g7013006.pdf>, concluded:

Overall, we determined that BBBSA was in material non-compliance with the majority of the grant requirements we tested. Most significantly, we found that BBBSA’s practices for recording and supporting grant-related expenditures were inadequate to safeguard grant funds and ensure compliance with the terms and condition of the grants. We also determined that all BBBSA expenditures were unsupported due to the commingling of funds within BBBSA’s general fund account. Finally, we found that BBBSA (1) did not adequately safeguard grant funds; (2) did not adequately monitor subrecipients or require subrecipients to support the grant funds received and expended; (3) charged unsupported and unallowable expenditures to the grant; (4) did not compute indirect costs based on its approved agreement; (5) did not adequately monitor consultants; (6) did not base its drawdown of funds on actual expenditures; (7) did not monitor actual spending against the approved budget; (8) did not properly safeguard accountable property acquired with grant funding; (9) did not prepare Federal Financial Reports based on actual expenditures; and (10) generated program income which was not properly reported. As a result of these weaknesses, we questioned \$19,462,448 in funding that the grantee has received and recommended the \$3,714,838 in funds not yet disbursed be put to better use.

11. Exploring the Duty of Care: Delegation vs. Abdication; Investments

(Please start on Assignment 12, too.)

(Note: This class also provides a preview of the Assignment 13, enforcement and sanctions.)

Guide: Chapter 4, **Legal Duties and Obligations**: “A Further Look at Investments,” at pp. 99-115. (We will discuss UMIFA/UPMIFA at greater length in **Assignment 15**.)

Supp.: Endowment values have recently recovered, but it was scary! Read stories from the Chronicle of Philanthropy’s 2012 endowment survey; “Harvard Ignored Warnings About Investments.”

Web: For info on Harvard’s \$30 billion (!) endowment for fiscal year ending June 30, 2012, see the Harvard Management Co.’s press release at go to: http://www.hmc.harvard.edu/docs/Final_Annual_Report_2012.pdf. Go to http://cdn.wds.harvard.edu/alumni_ltr_20110513.pdf for an explanation of how the HMC compensates its investment professionals.

For the Oregon AG’s \$2 million victory for poor trustee investing, see http://www.doj.state.or.us/releases/pdf/wintercross_ruling.pdf.

Siegel on charities that invested with Bernie Madoff:
http://www.charitygovernance.com/charity_governance/madoff -- especially http://www.charitygovernance.com/charity_governance/2009/03/it-was-fun-while-it-lived-university-investment-policies-are-going-to-change.html and http://www.charitygovernance.com/charity_governance/2009/04/yeshiva-university-get-religion.html (be sure to click the link to the heavily-redacted board minutes). The NY attorney general won a \$410 million civil settlement with the conflicted Yeshiva investment committee chair; go to <http://www.ag.ny.gov/press-release/federal-court-rules-ag-schneidermans-410-million-merkin-settlement-may-proceed> (April 16, 2013).

**12. Limitations on Fiduciary Monetary Liability;
Board or Board Member Enforcement of Fiduciary Duties**

*(We should finish **Assignment 12** this class; this class also provides a preview of the **Assignment 13**, enforcement and sanctions.)*

- Supp.: ALI draft Intro Note to Chap. 3, Topic 2; § 370 (Limitations on Monetary Liability for Breach).
News story on Schlinger Foundation.
- Guide: Chapter 4, **Legal Obligations & Duties**, “Relief for Directors and Officers,” at pp. 128-36.
Skim Chapter 12, **Risk Shifting, Indemnification and Insurance**, “Availability of Volunteer Protection Act Coverage,” at pp. 601-25 and pp. 627-28.

Chapter 6, **Federal Tax Exemption**, discussing King Foundation, at pp. 276-77; and Maddox Foundation, at pp. 279-80 (note: this case settled in May 2007 – by splitting the Maddox Foundation into two, one in each state).
- Web: Compare the whistleblower policies of the American Cancer Society (go to <http://www.cancer.org/AboutUs/WhoWeAre/Governance/report-fraud-or-abuse>) and (particularly the last paragraph!) of Beth Israel Deaconess Medical Center (go to <http://www.bidmc.org/Centers-and-Departments/Departments/Patient-And-Family-Care-Services/Office-of-Business-Conduct.aspx>).
- CD-ROM: Under Ch. 4: *John v. John*, 450 N.W.2d 795 (Wis. App. 1989) (at \Breach of Duties); and King Foundation Jury Instructions and Jury Questions (at \King Foundation). *Yeckel v. Abbott* 2009 Tex. App. LEXIS 3881 (King Foundation) – if you’re interested, Jack Siegel’s commentary on this case is posted at the LEXIS version of the case under “Emerging Issues Analysis.”

13. State Enforcement of Fiduciary Duties and Sanctions for Breach

(We will finish this Assignment next class. See also Assignments 11 and 12.)

Web: Former Independence Seaport Museum president, John Carter, was sentenced to 15 years for looting the museum (see <http://www.justice.gov/usao/pae/News/2007/nov/cartersentencing.pdf>) – and, in particular, read his amazing sentencing letter, at <http://media.philly.com/documents/CARTER21.pdf>. Former state senate leader Fumo was convicted for defrauding the museum; if interested, see *U.S. v. Fumo*, 2009 U.S. Dist. LEXIS 51581 (E.D. Pa. 2009).

Explore news stories on actions by state attorneys general at http://www.law.columbia.edu/center_program/ag/policy/CharitiesProj/resources/charitiespubl/charitiesnews. This project's website also has links to state AG websites and other material. A few recent examples:

For the Pennsylvania AG's 2013 complaint against the Hershey Trust board and their settlement, go to <http://www.attorneygeneral.gov/press.aspx?id=6964>.

A 2012 settlement between the Montana AG and the board of the Montana-based (but Delaware-incorporated) Central Asia Institute and its founder, Greg Mortenson (author of *Three Cups of Tea*) calls for him to pay \$1 million in restitution, and for governance changes including replacing the whole board and expanding their number (from 3 to 7) and hiring a new chief executive. (The AG consulted with the Delaware AG.) Go to https://files.doj.mt.gov/wp-content/uploads/2012_0405_FINAL-REPORT-FOR-DISTRIBUTION.pdf.

Also in 2012, the NY AG obtained a huge monetary settlement from directors as well as officers, for the benefit of affected student housing services; see <http://www.ag.ny.gov/press-release/ag-schneiderman-obtains-55-million-settlement-self-dealing-leading-not-profit-provider>.

See also the California AG's 2010 multi-million dollar complaint against former fiduciaries of the Monterey County AIDS Project and 2012 \$1-million settlement: <http://oag.ca.gov/news/press-releases/brown-moves-shut-down-charity-diverted-millions-intended-aids-patients> and http://ag.ca.gov/newsalerts/print_release.php?id=2613.

If time, we'll talk about the Uniform Law Commission's Model Protection of Charitable Assets Act (adopted July 2011; not yet enacted in any state), available at <http://www.uniformlaws.org/Committee.aspx?title=Protection%20of%20Charitable%20Assets%20Act>. Skim the 2011 approved text; the 2011 annual meeting draft (with comments), and reporter Laura Chisolm's 12/18/09 background memo.

14. Role of IRS in Charity Governance

(We will finish Assignments 13 and 14.)

Supp: Material relating to the IRS's 2008 redesign of the Form 990 – including, for comparison with the final Form 990 that you have in **Assignment 1**, the summary page and the governance page of the 2007 draft. ALI excerpts from draft § 130 (on federalism).

“Unconstitutional conditions” doctrine: See *Agency for International Development v. Alliance for Open Society International, Inc.* (June 20, 2013), at http://www.supremecourt.gov/opinions/12pdf/12-10_21p3.pdf, dealing with a Bush-era statute on federal funding of a worldwide anti-HIV/AIDS program. The statute stated that no funds may be used (1) “to promote or advocate the legalization or practice of prostitution” (2) by an organization “that does not have a policy explicitly opposing prostitution.” The Supreme Court struck the latter requirement under the First Amendment because it compelled as a condition of federal funding the affirmation of a belief beyond the scope of the program.

Web: IRS's webpage on governance of charitable organizations is at <http://www.irs.gov/Charities-&-Non-Profits/Governance-of-Charitable-Organizations-and-Related-Topics>, with the IRS's guidance on filling out Part VI (Governance) of the Form 990; and the checksheet to be followed by IRS examiners. Read Jack Siegel's comment on these at http://www.charitygovernance.com/charity_governance/2009/12/pulling-back-the-curtain-irs-audit-check-sheet.html#more. For later IRS analysis, see EO Director Lois Lerner's April 2012 speech, at pp. 3-7 of http://www.irs.gov/pub/irs-tege/georgetown_04192011.pdf.

Bruce Hopkins keeps a running tab of denial and revocation letters at http://www.nonprofitlawcenter.com/resDetails.php?item_ref=78.

For the range of administrative issues, see the letter from House Ways & Means Oversight Subcommittee to Commissioner Shulman, at http://waysandmeans.house.gov/UploadedFiles/Tax-exempt.Oct_6.11_Redacted.pdf.

The public version of the 990 (but not the 990-PF) redacts the identities of donor, leading to concerns that we will explore further in **Assignments 22 and 23**. For now see the following example:

<http://www.bostonglobe.com/news/politics/2013/05/18/corporations-anonymously-fund-attacks-and-influence-washington-policy-through-nonprofit-groups/qyaJIFcv7yYOsQvya6ykAK/story.html>.

CHARITABLE CONTRIBUTIONS

15. Exploring Fiduciary Duties: Endowment Spending and Accounting (UPMIFA)

To help you grasp this topic, think about a \$100 million gift to endowment. How much should be permanently restricted – i.e., not currently spendable by the charity! – if the gift value: (a) increases to \$120 million (appreciates) or (b) falls to \$80 million (is “underwater”)? For fun and context, explore Yale’s endowment policies, at <http://giving.yale.edu/gift-policies>.

Supp.: Skim Brody, NVSQ article in the Supplement for **Assignment 6**, at 548-553.

Web: Uniform Prudent Investment of Institutional Funds Act (UPMIFA) (2006): <http://www.uniformlaws.org/Act.aspx?title=Prudent%20Management%20of%20Institutional%20Funds%20Act>.

Note: Illinois’s version of UPMIFA: (1) omits the optional rebuttable presumption that spending 7% of the fair market value of an endowment fund is imprudent; and (2) defines “small” as a fund with a total value of less than \$50,000 (instead of \$25,000) for purposes self-help *cy pres* for a small charity (see generally **Assignment 17**).

See pages 17-20 (“Endowment Funds”) of the Art Institute of Chicago’s 2012 audited financial statements, at http://www.artic.edu/sites/default/files/fy12_fs_0.pdf.

For the estate-tax deductibility of a restricted charitable gift, see Private Letter Ruling 2002-02-032, available at <http://www.irs.gov/pub/irs-wd/0202032.pdf>.

16. Board's Responsibilities to Donors; Consequences of Breach of Restrictions and Who Can Enforce

Guide: Chapter 10, **Fundraising**: "Truth in Soliciting," at pp. 429-35; "Restricted Gifts," at pp. 441-55; and "Gift-Acceptance Policies," at pp. 468-73.

CD-ROM: Under Ch. 10: At Hastings College of Law, *Van de Camp v. Hastings*; at \Restricted Gifts, *Smithers v. St. Luke's-Roosevelt Hosp. Center*, 723 N.Y.S.2d 426 (App. Div. 2001); and at \Naming Rights, *United Daughters of the Confederacy v. Vanderbilt*, 174 S.W.3d 98 (Tenn. App. 2005).

Supp.: Excerpts from ALI Draft, Introductory Note to Chapter 5, Topic 2 (private enforcement), at pages 42-48.

Pretend you're the charity that received the donor letter in the Supplement. What do you do?!

Web: "University Gains Control over Robertson Endowment in Settlement," at <http://www.dailyprincetonian.com/2008/12/11/22395/>. If you're interested in more on *Robertson v. Princeton*, including the settlement agreement itself, see www.princeton.edu/robertson.

See Form 990 requirement, with links to info on gift acceptance policies, at <http://www.nonprofitlawblog.com/home/2009/01/gift-acceptance-policies.html>).

Siegel on New Jersey's subsequently-withdrawn proposal to encourage restricted gifts, at http://www.charitygovernance.com/charity_governance/2011/07/fuzzy-thinking-in-new-jersey-the-latest-round-of-proposed-fundraising-legislation.html.

See also <http://www.rollingstone.com/music/news/the-dark-side-of-celebrity-charities-20110628>.

And what is "donor intent"? Was the view of organized philanthropy as a mere financial conduit behind the debate at <http://www.bostonglobe.com/metro/2013/07/03/methodology-marathon-victim-payout-faulted-lawyer-group/sqxc7kjTz2OFpdxOTLT5VP/story.html>? Would society be better off if the One Fund spent *more* on administrative expenses?

17. Change of Purpose: Cy Pres and Equitable Deviation Charitable-Trust Doctrines; “Duty of Obedience”; Nonprofit “Conversions” to For-Profit Form

(We will finish Assignment 17 next class.)

Supp.: From the ALI draft, read the excerpts from § 460 (Cy Pres); § 240 (Effecting a Change in Charitable Purpose), and § 250 (Effect on Assets from a Change in Charitable Purpose). Chapter 4 has been tentatively approved, but we’re currently drafting Chapter 2, and debating whether to follow trust or corporate law for changes in charitable purpose, so your suggestions will be most helpful!

Guide: Chapter 10, **Fundraising**, “Changed Circumstances,” at pp. 466-68.

CD-ROM: CH. 10\Cy Pres: *In the Matter of Estate of Donald Othmer* 815 N.Y.S.2d 444 (Surrogate’s Court 2009); second cy-pres predeeding at 901 N.Y.S.2d 902 (Sup. Ct. 2009). Note that that subsequent events have not been kind to the hospital, which might close.

18. Regulation of Charitable Solicitations

(We will finish both *Assignment 17* and *Assignment 18* this class.)

Guide: Chapter 9, **Regulation and Registration**: p. 411 and pp. 413-24.

CD-ROM: Ch. 9\People v. World Church of the Creator 760 N.E.2d 953 (Ill. 2001).
Under \Supreme Court Trilogy, read the fourth case, *Madigan v. Telemarketing Associates, Inc.*, 538 U.S. 600 (2003).

Web: On the Illinois AG's website, click on "Charities," then Rules and Statutes, and skim the Solicitations for Charity Act.

Explore the website of the National Association of Attorneys General/
National Association of State Charity Officials, at www.nasconet.org.

See the Massachusetts attorney general's warnings about charitable solicitations in response to the Boston Marathon bombings at <http://www.mass.gov/ago/news-and-updates/press-releases/2013/2013-04-17-tips-to-giving-wisely.html>. See the results of a survey posted by the Connecticut attorney general about charities that soliciting donations after the Newtown elementary school shootings, at <http://www.ct.gov/ag/cwp/view.asp?a=4424&Q=522546>.

For info on New Jersey's free mobile app on specific charities (rolled out in May 2012), go to <http://itunes.apple.com/us/app/new-jersey-charity-search/id503535534?ls=1&mt=8>.

For a (discouraging) overview, explore the *Tampa Bay Times* special report at <http://www.tampabay.com/topics/specials/worst-charities.page> -- especially Part 2 (A Failure of Regulation), which will frame our discussion. (Note the limit on federal oversight: The FTC can regulate paid (professional) fundraisers, but not charities soliciting for themselves.) See also the piece by the reporting partner (Center for Investigative Journalism) at <http://cironline.org/blog/post/charity-series-prompts-cir-take-proactive-steps-4647>. See also Senator Coburn's request that GAO do a study on the IRS's enforcement activities: <http://www.coburn.senate.gov/public/index.cfm/2013/7/dr-coburn-asks> (this permalink takes a while to load, but the link to the letter is fast).

But see Oregon's new statute (<http://www.leg.state.or.us/13reg/measures/hb2000.dir/hb2060.en.html>) denying state tax deductions for contributions to charities with high levels

of reported expenses the right answer? See <http://www.nonprofitquarterly.org/philanthropy/22475-oregon-sets-30-program-spending-benchmark-for-charities.html> (click the link to the statute). Note the Nonprofit Association of Oregon supported this bill; see FAQs at <http://www.nonprofitoregon.org/node/1320>; the AG's press release is at <http://www.doj.state.or.us/releases/Pages/2013/rel061113.aspx>.

On almost the same day, GuideStar, the BBB Wise Giving Alliance, and Charity Navigator issued a call to resist focusing on the "overhead myth"! http://overheadmyth.com/?hq_e=el&hq_m=2137243&hq_l=4&hq_v=a4247839a5

See the New York attorney general's latest report "Pennies for Charities," at http://www.charitiesnys.com/pdfs/2012_Pennies.pdf: "In total, 61.47 percent, or \$147,874,686 million, of the funds raised by 82 telemarketers in 2011 was paid to fundraisers for fees and/or used to cover the costs of conducting the campaigns." Michigan's 2012 report, available at http://www.michigan.gov/documents/ag/2012_PFR_Charitable_Solicitations_Report_410889_7.pdf, emphasizes the limits of its study: "The costs of a professional fundraiser's campaign may not resemble the charity's overall fundraising costs. For example, a charity may fundraise internally with its own employees and volunteers; this internal fundraising is not included in this report. Also, fundraising campaigns are often used to generate new donors. This can be costly. But once a new donor is obtained, future donations are less expensive to acquire."

For a story with a happy ending, with links to the opinions requiring the fraudulent fundraiser to make \$3.1 million in restitution, go to <http://www.ag.ny.gov/press-release/ag-schneiderman-obtains-court-decision-ordering-major-long-island-fundraiser-pay-31>.

Supp: Perry, *Worst Charities' Report Prompts Calls for Charities to Respond*.

19. Pledges

*(This will take about half an hour, so we will start **Assignment 20**, too.)*

Guide: Chapter 10, **Fundraising**, pp. 435-41 (“Pledges”).

CD-ROM: Ch. 10\Pledges: *Woodmere Academy v. Steinberg*, 363 N.E.2d 1169 (N.Y. 1977) and skim *Maryland National Bank v. United Jewish Appeal Federation*, 407 A.2d 1130 (Md. 1979).

Web: Doherty, *Record Pledge Remains Unsettled*, at <http://www.dukechronicle.com/articles/2010/09/21/record-pledge-remains-unsettled>.

OTHER TAX RULES FOR CHARITIES AND OTHER NONPROFITS

20. Tax Treatment of Charitable Contributions

Supp.: Skim I.R.C. § 170(a)(1), (c) and (f)(8), (f)(16) & (f)(17), at beginning of Supp. at Code & Regs 1-3.

Web: “IRS Offers Tips for Year-End Giving” (Dec. 2012), at <http://www.irs.gov/uac/Newsroom/IRS-Offers-Tips-for-Year-End-Giving-2012> (check out the online mini-course at the bottom!), and *Charitable Contributions—Substantiation and Disclosure Requirements* (Pub. 1771, 2011), at <http://www.irs.gov/pub/irs-pdf/p1771.pdf>. Ways & Means Committee Feb. 14, 2013 hearing testimony available at <http://waysandmeans.house.gov/calendar/eventsingle.aspx?EventID=319000>.

CD-ROM: Ch. 7\Internal Revenue Code: We will briefly discuss subsections (b) and (e) [not in the Supplement] of § 170.
Skim I.R.C. § 6115 (quid-pro-quo contributions) and regs under \Regulations.

Lest you think these rules aren’t serious, see *Cohan v. Commissioner*, No. 19849-05, T.C. Memo. 2012-8 (2012), where the U.S. Tax Court upheld the IRS’s disallowance – because of the charity’s failure to provide a contemporaneous acknowledgement that no goods or services were provided in return for the contribution – of a \$4.5 million charitable-contribution deduction for the grant to the Nature Conservancy of rights related to a Martha’s Vineyard farm.

Guide: Chapter 7, **Tax Aspects of Charitable Giving**: “Deduction Basics,” “Disclosures and Notices by Charities,” and “Substantiation,” at 329-55.

Supp.: NY Times editorial, “Charity Begins in Washington.”

Web: For data in one page on **non-cash gifts**, go to <http://www.taxpolicycenter.org/UploadedPDF/1001577-composition-charitable-contributions.pdf>; if you’re interested in more detail, see the latest IRS data on noncash gifts, at <http://www.irs.gov/pub/irs-soi/13innoncash10.pdf>. Read IRS Chief Counsel Advice 2006-23-063, on **quid-pro-quo penalty**, at <http://www.irs.gov/pub/irs-wd/0623063.pdf>.

Further reading if you're interested:

For detailed discussion of the rules on deducting charitable contributions, see JCX-55-11 (October 14, 2011) Present Law and Background Relating to the Federal Tax Treatment of Charitable Contributions, at <https://www.jct.gov/publications.html?func=startdown&id=4371>. This was prepared for a Senate Finance Committee hearing – at <http://www.finance.senate.gov/hearings/hearing/?id=915d5477-5056-a032-524b-feac6e9e3321> you can find witness statements from economist Gene Steuerle and law professor Roger Colinvaux.

For Obama's **proposal to cap the value of itemized deductions** (including charitable contributions) at 28%, see pp. 134-35 of <http://www.treasury.gov/resource-center/tax-policy/Documents/General-Explanations-FY2014.pdf>. In 2012, the Joint Committee staff provided the following example of a similar proposal (full discussion at pp. 528-36 of <http://www.jct.gov/publications.html?func=startdown&id=3796>):

“Assume that a taxpayer in the 35-percent income tax bracket for 2012 makes a \$10,000 charitable contribution. Under present law, the \$10,000 contribution will result in a \$3,500 tax savings, or 35 percent of \$10,000 (disregarding any other limitations that may apply to reduce the taxpayer's itemized deductions). Under the proposal, the same \$10,000 contribution by the same 35-percent bracket taxpayer would result in a tax savings of only \$2,800 (28 percent of \$10,000), thus raising his tax liability by \$700 (or seven percent (35 percent minus 28 percent) of his \$10,000 contribution).”

If you're interested in how **donor-advised funds** work, see the latest annual report of the Fidelity Charitable Gift Fund, a 501(c)(3) established by Fidelity Investments, at <http://www.fidelitycharitable.org/docs/giving-report-2013.pdf>.

If you're interested in **reform proposals**, see the staff of the Senate Finance Committee's June 13, 2013 discussion draft of options, with links, at <http://www.finance.senate.gov/imo/media/doc/06132013%20Tax-Exempt%20Organizations%20and%20Charitable%20Giving.pdf>.

21. Private Foundations

(I'll just walk you through this regime – you will NOT be responsible for the details. Start Assignment 22.)

Note: All 501(c)(3)'s are presumed to be private foundations unless excluded under the rules of I.R.C. § 509. The full ramifications of private foundation status are beyond the scope of this course; just appreciate that being a “private foundation” carries more restrictions than do the “public charity” alternatives. The rules create four major differences between public charities and private foundations:

- (i) filing and disclosure requirements (Form 990 vs. Form 990-PF);
- (ii) intermediate sanctions (for PCs) versus per se prohibitions (for PFs);
- (iii) minimum annual payout requirement for private foundations; and
- (iv) a (low-level) private foundation investment income tax.

Guide: Skim Chapter 6, **Federal Tax Exemption**, “Private Foundations,” at pp. 263-85.

Web: *NBA Player Charities Often a Losing Game*, at http://www.sltrib.com/ci_11314692.

**22. Advocacy, Lobbying, and Political Activities;
501(c)(3)/(c)(4)/PACs (§ 527) Affiliations**

(Having started **Assignment 22** last class, we will finish it today. Start **Assignment 23**.)

How do you organize these tax rules? Distinguish among three categories of activities:

Advocacy: not a term used in the Code, and a main purpose of many educational organizations and other charities (including churches!).

Activity to influence legislation: limited **lobbying** is allowed to (c)(3)'s; too much lobbying is the reason some state-law charities must settle for (c)(4) exemption.

Electioneering: participating in **political campaigns** is verboten to (c)(3)'s; and cannot be the "primary activity" of other exempt organizations ((c)(4)'s, (c)(5)'s and (c)(6)'s)). See <http://www.propublica.org/article/six-facts-lost-in-irs-scandal>.

Professor Ellen Aprill (Loyola-L.A.) summarizes the IRS's identifying political campaign activity as any of the following:

- * The communication identifies a candidate for public office;
- * The timing of the communication coincides with an electoral campaign;
- * The communication targets voters in a particular election;
- * The communication identifies that candidate's position on the public policy issue that is the subject of the communication;
- * The position of the candidate on the public policy issue has been raised as distinguishing the candidate from others in the campaign, either in the communication itself or in other public communications; and
- * The communication is not part of an ongoing series of substantially similar advocacy communications by the organization on the same issue.

Note that the 2010 decision in *Citizens United* (which we will not have time to read) is a First Amendment (constitutional) case, not a tax law case. (Once the courts rejected *Citizens United*'s assertion that it was merely making a documentary about Hillary Clinton, rather than making an electioneering communication, the issue became the legality under campaign finance law of having corporate donors and disclosure of funders for movie ads.) *Citizens United* has more implications for (c)(4)'s than for (c)(3)'s. And I'll describe a gift tax issue enforcement of which the IRS announced in 2011 it was suspending.

Guide: Chapter 6, **Federal Tax Exemption**, "Lobbying," at pp. 296-99; and Chapter 9, **Registration and Reporting**, "Lobbying," at pp. 424-28.
Chapter 6, **Federal Tax Exemption**, "Political Activity," at pp. 285-96.

Code&Regs: I.R.C. § 501(h). Note: The dollar limits are in I.R.C. § 4911 (not in your Code & Regs) – see Schedule C to the Form 990.

Note: An organization seeking recognition of tax exemption under a subsection other than (c)(3) files on Form 1024 (rather than Form 1023). However, only (c)(3) status requires an advance ruling; a “self-declarer” can just start filing the appropriate Form 990. Read the IRS questionnaire sent to “self-declarers” and see the links to Form 1024 and other material at <http://www.irs.gov/Charities-&-Non-Profits/Other-Non-Profits/Self-declarers-questionnaire-for-section-501-c-4-5-and-6-organizations>.

Former IRS official and EO journalist Paul Streckfus advises an unhappy applicant for exemption that it is not helpless:

- “(1) If you don’t like the person handling your case or all the questions, ask for someone else or ask to speak to a reviewer.
- “(2) If you don’t get satisfaction at the reviewer level, go up the managerial chain, first in Cincinnati, and then in Washington.
- “(3) If no one in the chain of command will help resolve your situation, try the Taxpayer Advocate Service or write your members of Congress and local media.
- “(4) If your organization has an ideological bent, there are probably organizations that will be glad to take your case free as part of their own efforts.
- “(5) If you are seeking section 501(c)(3) status, consider a section 7428 action after 270 days.
- “(6) If you are seeking section 501(c)(4) status, continue to operate as a ‘self-declared.’ If the IRS ever audits you, the burden is on the IRS to prove you are not a (c)(4).
- “Caveat: These rules of the road rely on a somewhat functional IRS, which appears not to be the case recently. However, the Tea Party organizations have had their cases heard and mostly acted upon favorably after following these steps.”

Guide: In Ch. 6, under \Lobbying, read *Regan v. Taxation With Representation*, 461 U.S. 540 (1983).

Web: For limits on political activity by (c)(3)’s, see the 2008 letter from the IRS to all of the political parties, at http://www.irs.gov/pub/irs-tege/2008_paci_party_letter.pdf. (Note that the IRS terminated its Political Activities Compliance Initiative after five years, without explanation.) If you’re interested in lots of examples, see *Revenue Ruling 2007-41*, at http://www.irs.gov/irb/2007-25_IRB/ar09.html. For IIT’s

policy on political activity on campus, go to <http://www.iit.edu/news/iittoday/?p=7322> (also in the Kent Record, at http://www.kentlaw.edu/depts/acadadm/record_archives/20120917.html).

For (c)(4)'s, see <http://www.irs.gov/Charities-&-Non-Profits/Other-Non-Profits/Life-Cycle-of-a-Social-Welfare-Organization>, and under the heading "Ongoing Compliance," explore the links under "Jeopardizing Exemption." If you're interested, you can find details in *Revenue Ruling 2004-6* (advocacy activities by (c)(4)'s, (c)(5)'s, and (c)(6)'s), at http://www.irs.gov/irb/2004-04_IRB/ar10.html.

For a private ruling approving a (c)(3), (c)(4), PAC chain, see <http://www.irs.gov/pub/irs-wd/1127013.pdf> (April 15, 2011).

Reportedly, the IRS erroneously released Crossroads GPS's exemption application (as a (c)(4)) while it was still pending; Pro Publica has it at <http://s3.documentcloud.org/documents/537045/crossroads-gps-application-to-irs.pdf> (see Part II, Q.15, re political activities). The IRS posted Crossroads GPS's 2011 Form 990 at http://bulk.resource.org/irs.gov/eo/2012_05_EO/27-2753378_990O_201112.pdf. More info is available at <http://www.publicintegrity.org/2012/06/21/9168/nonprofit-profile-crossroads-gps>.

For distinction between 527 and (c)(4)'s in terms of federal-level disclosure, here are links to segments of the September 29, 2011 episode of the Colbert Report that is surprisingly accurate but typically profane (send the kids out of the room): <http://www.colbertnation.com/the-colbert-report-videos/398530/september-29-2011/colbert-super-pac---ham-rove-s-comeback> and <http://www.colbertnation.com/the-colbert-report-videos/398531/september-29-2011/colbert-super-pac---trevor-potter---stephen-s-shell-corporation> (watch them in that order). Don't worry if you're not a regular viewer of Colbert or are otherwise not following the plot – I'll explain what's going on in class. Colbert won a Peabody award for shining light on the shortcomings of campaign law; as his website explains, he's not just a jokester (or has he shown the law is a joke?):

"In an effort to bring attention to campaign finance laws, Colbert applied for his own political action committee. At a hearing on June 2011, Colbert was granted permission by the Federal Election Commission to form his own Super PAC, Americans for a Better Tomorrow, Tomorrow. Since receiving approval, fans have signed up nationwide and sent along financial support to help the Super PAC continue to bring attention to campaign finance abuse. In a New York Times article on Colbert's PAC, Sheila Krumholz, executive director of the Center for

Responsive Politics states, ‘He is taking on a serious subject that many Americans find deadly dull and is educating the broader public on why it matters and what is at stake.’” (I’ve heard that FEC staff are huge Colbert fans!)

Alliance for Justice, “Nonprofit Electoral Activity After *Citizens United*,” at http://www.afj.org/assets/resources/citizens_united_fact_sheet.pdf -- also, explore this terrific website for info on advocacy and lobbying.

Explore the IRS’s Political Activities Compliance Initiative (PACI), at [http://www.irs.gov/Charities-&-Non-Profits/Political-Activity-Compliance-Initiative-\(2004-Election\)](http://www.irs.gov/Charities-&-Non-Profits/Political-Activity-Compliance-Initiative-(2004-Election)).

The NY AG declined to back off on overseeing (c)(4)s – see http://taxprof.typepad.com/taxprof_blog/2012/09/ny-ag-refuses-.html. For N.Y. disclosure legislation enacted in 2013, see <http://www.venable.com/nonprofits-operating-in-new-york-must-disclose-donors-itemize-spending-for-election-advocacy-and-issue-ads-06-27-2013/>. For the validity of state disclosure requirements, see the mixed victory for the state in *Iowa Right to Life Committee, Inc. v. Tooker*, 2013 U.S. App. LEXIS 11881 (8th Cir., June 13, 2013).

Supp.: “Pastors’ Web Electioneering Attracts U.S. Reviews of Tax Exemptions” and “Former EO Director: Penalize Promoters of Church Campaign,” Supp. at 22-1 through 22-6. More recently, see videos from proponents of “Pulpit Freedom Sunday” and items from those who with a different perspective, at http://taxprof.typepad.com/taxprof_blog/2012/10/1400-pastors-.html; and <http://www.speakupmovement.org/church/LearnMore/details/4702> and <http://projectfairplay.org/>, set up by Americans United for Separation of Church and State.

Web: See IRS memo on website links, at <http://www.irs.gov/pub/irs-tege/internetfieldddirective072808.pdf> (and Determination Letter 2009-08-050 at <http://www.irs.gov/pub/irs-wd/0908050.pdf>).

For the DISCLOSE Act of 2013, see <http://www.brennancenter.org/legislation/disclose-2013-act> (and follow the link to the legislation, on a page giving it a 2% chance of enactment).

23. IRS (c)(4) “Scandal”: Administering the Line Between Advocacy and Politics

(If we finish this early, we’ll start **Assignment 24** today.)

To put this topic in context, consider the observation made a month before the scandal broke by John L. Buckley and Dallas Woodrum, *The Intersection of the Tax Code and Citizens United*, 139 Tax Notes 169, 178 (2013):

“The fact that tax rules have proved to be woefully inadequate in policing the political use of tax-exempt entities (other than section 501(c)(3) entities) should not be a surprise. They were developed when the election laws prohibited corporations (including tax-exempt corporations) from using their funds for political contributions [and contributions for independent campaign expenditures].

...

“Now, tax-exempt entities can be used for political purposes with some impunity. The ambiguous limitations on the political use of section 501(c)(4) organizations can be ignored, knowing that as a practical matter the IRS will not want to be accused of taking sides in a campaign.”

Web:

This story broke wide open in the apology heard round the world at (really!) the May 2013 ABA Tax Section Meeting of the Exempt Organizations Committee, with IRS EO Director Lois Lerner’s answer to what we now know was a question she planted: <http://electionlawblog.org/?p=50160>.

Then the Treasury Inspector General for Tax Administration (TIGTA) released its report, *Inappropriate Criteria Were Used to Identify Tax-Exempt Applications for Review*, available at

<http://www.treasury.gov/tigta/auditreports/2013reports/201310053fr.pdf> -- read the Executive Summary and the IRS’s response (at the end), and skim the extensive timeline of events.

For the IRS’s table of the status of its responses, go to:

<http://www.irs.gov/uac/Exempt-Organizations-EO-Recommended-Actions>.

For Richard Cohen’s column explaining what happened, go to

http://www.washingtonpost.com/opinions/richard-cohen-irs-scandal-inspires-a-kafka-esque-tale/2013/05/20/206286e2-c16e-11e2-8bd8-2788030e6b44_story.html?hpid=z2. A straightforward version to the

same effect appears at <http://www.businessweek.com/news/2013-06-17/irs-couldn-t-process-groups-cases-quickly-enough-manager-says>. See also <http://www.npr.org/blogs/itsallpolitics/2013/06/18/193086191/6-things-we-just-learned-about-the-irs-scandal>.

From the Tea-Party side, see <http://www.actrightlegal.org/irs-litigation/>, and, if you're interested, read the "History, Overview and Status Report" from the link at the bottom of the page. For one set of follow-up questions from the IRS, go to <http://media.aclj.org/pdf/lois-lerner-targeted-irs-inquiry-letter-3-16-2012.pdf>. For the *Bivens* suit brought by some of the Tea Party groups against the current and former officials (and suit against the Treasury and IRS), go to <http://aclj.org/free-speech-2/aclj-files-federal-lawsuit-against-irs-on-behalf-of-25-tea-party-groups>. Will these suits succeed? Read <http://www.motherjones.com/politics/2013/06/tea-partiers-dont-have-case-against-irs>.

The Ways and Means Committee invited groups claiming political bias to fill out a questionnaire, available at <https://waysandmeans.house.gov/forms/form/?ID=2538>. But see <http://www.washingtonpost.com/blogs/wonkblog/wp/2013/05/15/before-the-irs-harassed-the-tea-party-it-harassed-gay-rights-groups/>. See also <http://progresstexas.org/blog/irs-requested-information-progress-texas-took-479-days-approve>, and follow the links. See also <http://www.nytimes.com/2013/05/27/us/politics/nonprofit-applicants-chafing-at-irs-tested-political-limits.html?hp>; and Marty Sullivan's analysis of the left-wing groups subject to intensive scrutiny in Supp. The Ways & Means minority posted the array of BOLO terms at: [http://democrats.waysandmeans.house.gov/press-release/new-irs-information-shows-\"progressives\"-included-bolo-screening-list](http://democrats.waysandmeans.house.gov/press-release/new-irs-information-shows-\) (with links to heavily redacted file entries, and to a memo summarizing them). See also Cong. Levin's letter to TIGTA (from that link), as well as <http://connolly.house.gov/uploads/RM%20Connolly%20-%20Letter%20to%20TIGTA%20-%20June%2025,%202013.pdf>. See also <http://thehill.com/blogs/on-the-money/domestic-taxes/307813-irs-ig-says-audit-limited-to-tea-party-groups>; and http://takingnote.blogs.nytimes.com/2013/06/25/revisiting-the-i-r-s-scandal/?_r=0. But TIGTA says these cases weren't comparable: http://waysandmeans.house.gov/uploadedfiles/tigta_final_response_to_rep_levin_6.26.13.pdf.

Why didn't the Democrats defend the IRS (and why didn't the IRS defend itself)? See <http://www.newrepublic.com/article/113697/more-and-more-it-looks-democrats-ceded-too-much-irs-scandal#>. See also <http://www.nytimes.com/2013/07/05/us/politics/irs-scrutiny-went-beyond-the-political.html?hpw>.

Sparring on the House Oversight Committee between Chairman Issa and Ranking (Democratic) Member Cummings also led to fireworks. For the

latest round as I prepared this Syllabus, go to <http://democrats.oversight.house.gov/MemoOnNoPoliticalTargetingAtIRS.pdf> and <http://oversight.house.gov/wp-content/uploads/2013/07/2013.07.17-DEI-Jordan-Camp-Boustany-to-Werfel-REDACTED.pdf>. And the most recent hearing – with links to written testimony and the video of the hearing itself – is at <http://oversight.house.gov/hearing/the-irs-systematic-delay-and-scrutiny-of-tea-party-applications/>.

Once again, Stephen Colbert got to the heart of the matter:

Part 1: <http://www.colbertnation.com/the-colbert-report-videos/426444/may-20-2013/mazda-scandal-booth---the-irs>;

Part 2: <http://www.colbertnation.com/the-colbert-report-videos/426445/may-20-2013/mazda-scandal-booth---the-irs---trevor-potter>

For Sen. Levin’s complaint that the (c)(4) regs improperly interpret “exclusively” as “primarily,” go to <http://www.levin.senate.gov/newsroom/speeches/speech/senate-floor-statement-on-the-internal-revenue-service-and-501c4-organizations/> and clicks the links at the bottom for his correspondence with the IRS.

For CREW’s letter to the IRS complaining about the (c)(4) status of Americans for Tax Reform (Grover Norquist), go to:

http://crew.3cdn.net/b468639ed1923001fe_a0m6is857.pdf. For Fox News’ campaign to strip Media Matters of its (c)(3) status, go to <http://nation.foxnews.com/media-matters/2011/06/27/want-file-irs-complaint-against-media-matters-click-here>.

Cartoons on the matter are at <http://www.usnews.com/cartoons/editorial-cartoons-on-the-irs-scandal?int=ad0986>.

The Future? So where do we go from here?

For the IRS’s June 24 and July 24 reports and status of current status of actions, go to: <http://www.irs.gov/uac/Newsroom/IRS-Charts-a-Path-Forward-with-Immediate-Actions>. See the June report at 9-10 for key management failings; Appendix E (the next-to-the-last item) provides an expedited process for (c)(4) applications pending for at least 120 days (as of May 28, 2013). The process includes a safe-harbor “self-certification” standard that reads (the IRS defines these terms and provides additional conditions):

1. During each past tax year of the organization, during the current tax year, and during each future tax year in which the organization intends to rely on a

determination letter issued under the optional expedited process, the organization has spent and anticipates that it will spend 60% or more of *both* the organization's total expenditures and its total time (measured by employee and volunteer hours) on activities that promote the social welfare [and]

2. . . . less than 40% of *both* the organization's total expenditures and its total time (measured by employee and volunteer hours) on direct or indirect participation or intervention in any political campaign on behalf of (or in opposition to) any candidate for public office

(The IRS Oversight Board pushed back on some of the IRS's more self-destructive proposals; see the Board's July 23 response at <http://www.treasury.gov/irsob/releases/>.)

On July 17, 2013, however, several affected Tea Party groups declined to take the IRS up on its offer; go to <http://aclj.org/free-speech-2/aclj-rejects-obama-administration-expedited-review-conservative-groups-unlawfully-targeted-irs>.

If you're interested, see the special report (dated June 30, 2013) to Congress on Political Activity and the Rights of Applicants for Tax-Exempt Status by the National Taxpayer Advocated, available at <http://www.taxpayeradvocate.irs.gov/userfiles/file/FullReport/Special-Report.pdf>.

More broadly, see the Senate Finance Committee white paper for possible reform actions at pages 13-16 of <http://www.finance.senate.gov/imo/media/doc/06132013%20Tax-Exempt%20Organizations%20and%20Charitable%20Giving.pdf>.

And will the IRS respond by giving up on enforcement? See, e.g., <http://www.propublica.org/article/dark-money-group-spent-on-house-race-then-told-irs-it-didnt>.

For one legislative proposal for going forward, see <http://www.brightlinesproject.org>.

24. Commercial Activities and the “Unrelated Business Income Tax”

(This **Assignment 24** will take about two full hours.)

Guide: Chapter 6, **Federal Tax Exemption**, “UBIT,” at pp. 299-317.

Supp.: In Code & Regs, read I.R.C. § 511(a) & (b); § 512(a)(1) & (3) (social clubs), and (b)(1) through (12); § 513(a), (c), & (i);
Treas. Reg. § 1.501(c)(3)-1(e).

Brody, excerpts from “Business Activities of Nonprofit Organizations” (2008); Mullen & Glanton, *Chicago Museums Increasingly Rely on Private, Nighttime Parties for Funding*. Note that Sen. Coburn proposed repealing (c)(6) exemption for professional sports leagues (like the NFL).

Web: Skim Smithsonian Institution’s 2011 Form 990-T (the first 4 pages), available at <http://www.si.edu/About/Tax>.
Read Private Letter Ruling 200722028 (no UBIT from sale of breast cancer items), at <http://www.irs.gov/pub/irs-wd/0722028.pdf>.
For a directory of the Metropolitan Museum of Art’s international store locations, go to: <http://store.metmuseum.org/The-Met-Store-Locations/page/internationalstorelocator>. See also the rental opportunities (“Entertaining at the Met”!), described at <http://www.metmuseum.org/about-the-museum/entertaining-at-the-met>.
Explore Colonial Williamsburg’s online shop (including reproduction sterling silver flatware), at <http://www.williamsburgmarketplace.com>.

For a one-page summary of the latest IRS statistics on UBIT, go to <http://www.irs.gov/pub/irs-soi/09ubisnapshot.pdf>. If you’re interested in details (based on 2009 returns), see the first few pages (through “Summary”) of the report at <http://www.irs.gov/pub/irs-soi/12eowinbulbustaxreturn.pdf>. As you’ll see, the amount of UBIT we collect is miniscule. (If we have time, in **Assignment 26**, we’ll see this confirmed in the 2013 Colleges and Universities Compliance Study.) So why do we keep the UBIT? See Brody & Cordes, “The Unrelated Business Income Tax: All Bark and No Bite?,” at http://www.urban.org/UploadedPDF/philanthropy_3.pdf.

Should nonprofit media be exempt? See, e.g. at <http://www.cof.org/templates/5.cfm?ItemNumber=18708> (Mar. 4, 2013).

Compare Steuerle, *When Nonprofits Conduct Exempt Activities as Taxable Enterprises*, at http://www.urban.org/UploadedPDF/philanthropy_4.pdf.

25. Peer Group Role in Charity Governance

(This will be brief, if we don't omit it altogether for lack of time.)

Web: The Panel on the Nonprofit Sector, convened by Independent Sector at the request of then-Senate Finance Committee chair Chuck Grassley, released its report on self-regulation in Fall 2007. Go to <http://www.nonprofitpanel.org/Report/index.html>.

Grassley asked the Evangelical Council for Financial Accountability (www.ecfa.org) to carry on his investigation into certain ministries. See “Grassley Releases Review of Tax Issues Raised by Media-based Ministries,” at http://grassley.senate.gov/news/Article.cfm?customel_dataPageID_1502=30359. See the Report of the Commission, issued to Senator Charles Grassley in December 2012, at <http://religiouspolicycommission.org>.

For an example of a public/private partnership between a state AG and a state nonprofit association, go to www.ag.state.il.us/charities/charitable_advisory.html, and click on the link to the Donor's Forum for best practices. The Illinois AG also has links to other charity watchdogs and “peer regulators.”

Check out:

- * BBB Wise Giving Alliance Charity Standards, at <http://www.bbb.org/us/Standards-Charity/> – also, search, e.g., for “Feed the Children”
- * Association of Fundraising Professionals Ethics Guides, at <http://www.afpnet.org/ethics>
- * Charity Navigator, at www.charitynavigator.org and read “How Do We Rate Charities?” under Methodology – also, search, e.g., for “American Red Cross,” and read the rating and comments.
- * Wall Watchers, at www.ministrywatch.com, and read a couple of “Donor Alert Ministries.”
- * American Institute of Philanthropy, at www.charitywatch.org.

Supp.: Bialik, *Charity Rankings*.

26. Focus on Federal Tax-Exemption of Higher Ed and Hospitals (“Eds and Meds”)

(We’ll abbreviate or omit this topic if we’re running out of time.)

Guide: Chapter 6, **Federal Tax Exemption**, box on pp. 260-61.

Web: See –

Eds: For the House Ways & Means Oversight Subcommittee’s hearing on the colleges and universities compliance study (available at http://www.irs.gov/pub/irs-tege/CUCP_FinalRpt_042513.pdf), with the statement by EO Director Lois Lerner, go <http://waysandmeans.house.gov/calendar/eventsingle.aspx?EventID=332314>.

For advice, see <http://www.capdale.com/lessons-learned-from-the-irs-colleges-universities-compliance-project>.

For the questionnaire on the IRS’s Colleges and Universities Compliance Check, go to <http://www.irs.gov/charities/charitable/article/0,,id=220698,00.html>.

Meds: On the Health Care Act’s requirements in § 501(r), skim Bailey, “New Federal Income Tax Requirements for Tax-Exempt Hospital Organizations,” at http://www.foley.com/publications/pub_detail.aspx?pubid=7057; Form 990, Schedule H, at <http://www.irs.gov/pub/irs-pdf/f990sh.pdf> (just skim instructions, at <http://www.irs.gov/pub/irs-pdf/i990sh.pdf>). Note: Because the community needs assessment will be attached to the Form 990, hospitals are worried about disclosing information that could be useful to their competitors; an incomplete picture is also a concern.

27. State Property-Tax Exemption for Charities

(We'll abbreviate or omit this topic if we're running out of time.)

Guide: Chapter 8, **Other Benefits**, “Property Taxes” and “Sales Taxes,” at pp. 375-88.

Web: Brody, Marquez & Toran, <http://www.urban.org/UploadedPDF/412640-The-Charitable-Property-Tax-Exemption-and-PILOTs.pdf>.

See Brody bibliography on property-tax exemption and PILOTs at <http://www.urban.org/taxandcharities/upload/prop-tax-brody-biblio-July-2012.pdf> -- focus on Illinois, but skim the rest.

Note: As for Pennsylvania, in June 2013, the legislature approved an amendment to the state constitution “providing that the General Assembly may, by law, establish uniform standards and qualifications which shall be the criteria to determine qualification as institutions of purely public charity under Article VIII, Section 2(a)(v) of the Pennsylvania Constitution.

“In order to amend the Constitution, legislation proposing the Constitutional amendment must be passed by the General Assembly in two consecutive legislative sessions and be advertised in newspapers upon each passage before being submitted to the electorate for approval.” See –

<http://www.legis.state.pa.us/WU01/LI/BI/FN/2013/0/SB0004P0347.pdf>.

Read the Illinois Supreme Court’s opinion in Provena Covenant Medical Center, upholding denial of exemption for 2002, available at <http://www.state.il.us/court/opinions/supremecourt/2010/march/107328.pdf>, and Provena’s reaction, posted at: <http://www.provena.org/covenant/body.cfm?xyzpdqabc=0&id=6&action=detail&ref=2675>. Provena is seeking exemption for subsequent years.

Skim the denial of property-tax exemption to a nonprofit ice rink, at <http://www.tax.illinois.gov/legalinformation/hearings/pt/pt13-04.pdf>.

See also <http://www.nonprofitmaine.org/study-commission-to-look-at-taxing-nonprofits/>, and follow the links to the explanation in the earlier blog post.

28. Exam Practice

On our Course Website, you can find some old exams. I'll divide up the class into groups to prepare and present questions from the 2005 and 2010 exams for us to discuss.

EXAM

The exam will be on Thursday, December 19, at 1:15 p.m. This will be a 3-hour, open-book exam.

Take into the exam all of your written course material and your notes, and any other written material you wish. Some of you might be living out of your notebook computers. You **may** bring your computer into the exam, including your notes and outlines, but you **may not** bring any CD-ROMs or go online. Anyone who prepares for class, attends regularly, and studies the material should be able to do well on the exam; by contrast, anyone who does not keep up should not be able to do well on the exam simply by having an electronic outline.