CENTER *for* COMPETITIVE POLITICS
Congress shall make no law...

October 8, 2014

Via First Class Mail and Facsimile

Ms. Natalia Luna Ashley, Executive Director
Texas Ethics Commission
P.O. Box 12070
Austin, Texas 78711-2070

Re: Constitutional Issues with Rule Proposed August 21, 2014

Ms. Ashley and Members of the Commission:

I write on behalf of the Center for Competitive Politics ("CCP"), a nonpartisan § 501(c)(3) organization dedicated to promoting and protecting First Amendment political speech rights. In addition to scholarly and educational work, CCP is actively involved in litigation against unconstitutional laws and regulations at both the state and federal levels.

The purpose of this comment is to raise CCP's serious constitutional concerns about the rules the Commission voted to propose at its August 21, 2014 meeting ("Proposed Rules"). In particular, these Rules' definition of "principal purpose" suffers from the same constitutional problems that plagued last year's S.B. 346, which Governor Perry vetoed.[1] This proposed definition is likely unconstitutional, and thus subject to legal challenge if adopted. Litigation challenging this definition will cost valuable resources, both to defend the lawsuit and to reimburse a successful challenger's legal fees. The definition is also problematic insofar as it attempts to impose by administrative rule a result that the legislative process specifically rejected.

I. The "principal purpose" definition is unconstitutional because it requires reporting and disclosure by entities that do not have a major purpose of influencing elections.

A. Implications of a "principal purpose" finding.

The definition of "principal purpose" has significant implications under Texas law. State law defines "political committee" as "a group of persons that *has as a principal purpose* accepting

[1] *See* Office of Governor Rick Perry, "Gov. Perry Vetoes SB 346," May 25, 2013 (http://governor.state.tx.us/news/veto/18569/) ("Freedom of association and freedom of speech are two of our most important rights enshrined in the Constitution. My fear is that Senate Bill 346 would have a chilling effect on both of those rights in our democratic political process. While regulation is necessary in the administration of Texas political finance laws, no regulation is tolerable that puts anyone's participation at risk or that can be used by any government, organization or individual to intimidate those who choose to participate in our process through financial means. At a time when our federal government is assaulting the rights of Americans by using the tools of government to squelch dissent it is unconscionable to expose more Texans to the risk of such harassment, regardless of political, organizational or party affiliation. I therefore veto Senate Bill 346.")

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political contributions or making political expenditures."[2] Thus, a principal purpose finding triggers political committee status—and the attendant requirements to appoint a treasurer,[3] keep detailed records,[4] and submit comprehensive reports to the State.[5] It also subjects persons who inadvertently misreport this information to misdemeanor[6] and civil liability up to three times the amount not reported.[7] These are non-trivial burdens upon expressive and associative activity that the First Amendment protects, and are all triggered by a "principal purpose" finding.

The Proposed Rules are problematic because they adopt a reading of this operative phrase—"principal purpose"—that is both novel and unconstitutional. The phrase appears not only in Texas campaign finance law, but also in federal law and the laws of other states. As such, "principal purpose" is a term of art in the campaign finance context. It is a trigger designed to limit burdensome political committee regulation to entities that dedicate a sufficient quantity of their activity to making contributions or expenditures. The Supreme Court and federal appellate courts have held that any regime not so limited unconstitutionally burdens First Amendment activity.

Nevertheless, the Proposed Rules read the word "a" in the phrase "a principal purpose" to suggest an impermissibly low threshold of activity for triggering political committee status. In addition to bucking controlling authority, this reading violates the principal of statutory construction that statutes are to be interpreted on their face, in accordance with their plain meaning. According to Ballantine's Law Dictionary, "principal" means "[o]f first importance. In the first rank." The Law Dictionary defines "principal" similarly—"the leading, or most important; the original." But with a 25% threshold,[8] the Proposed Rules do not require that political contributions or expenditures in fact be "the leading" purpose of an entity before it is subject to regulation as a political committee.

Beyond its legal meaning, the Proposed Rules also ignore the *common* meaning of "principal." "Principal" originated from the several Latin words: "principium," meaning "source"; "princeps" or "princip-", meaning "first" or "chief"; or "principia," meaning "foundations." Thus, the fundamental question the statute implies is whether or not an organization's chief purpose is to support or oppose candidates. The Proposed Rules eviscerate this safeguard.

B. First Amendment requirements for political committee status.

An organization must have a "major" or "primary" purpose of influencing elections before it may be regulated as a political committee. This is because, as noted above, the organizational,

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[2] Tex. Elec. Code § 251.001(12) (emphasis supplied).
[3] Tex. Elec. Code § 252.001.
[4] Tex. Elec. Code § 254.001(b)-(e).
[5] Tex. Elec. Code §§ 254.031-254.043 ("Political Reporting Generally"); 254.121-254.130 ("Reporting by Specific-Purpose Committee"); 254.151-254.164 ("Reporting by General-Purpose Committee"); 254.181-254.184 ("Modified Reporting Procedures; $500 Maximum in Contributions or Expenditures"); 254.323 ("Liability to State").
[6] Tex. Elec. Code § 254.001(e).
[7] Tex. Elec. Code § 254.232.
[8] Proposed Rules § 20.1 (B); (C).

registration, reporting, and disclosure requirements imposed upon political committees burden First Amendment activity.

The term "major purpose" is born of the Supreme Court's 1976 decision in *Buckley v. Valeo,* an omnibus challenge to the Federal Election Campaign Act ("FECA"). The ruling is notable for its protection of the First Amendment rights of speech and association.[9] When *Buckley* was decided, FECA required disclosure from "political committees," which the law defined only as organizations making "contributions" or "expenditures" over a certain threshold amount.[10] Concerned that this definition "could be interpreted to reach groups engaged purely in issue discussion," the Court promulgated the "major purpose" test to distinguish between entities engaged in sufficient activity to justify imposing burdensome political committee requirements.[11]

The test is straightforward: the government may compel generalized contributor disclosure from "organizations that are under the control of a candidate or the major purpose of which is the nomination or election of a candidate."[12] This is permissible *only* because such an organization's expenditures "are, by definition, campaign related."[13] Thus, it is safe to assume that donors to these entities wish to further the organization's purpose: influencing a campaign. When the organization lacks such a purpose, however, that assumption no longer holds.

This threshold for contributor disclosure has been widely adopted and upheld by state and federal courts, which have reiterated *Buckley*'s holding that "a political committee may 'only encompass organizations that are *under the control of a candidate or the major purpose of which is the nomination or election of a candidate.*'"[14] Indeed, "disclosure laws may not impose overly burdensome administrative costs and organizational requirements for groups…'whose major purpose is not campaign advocacy, but who occasionally make independent expenditures.'"[15]

The Proposed Rules' suggestion that "[a] group may have more than one principal purpose"[16] demonstrates a lack of understanding of this foundational precedent. The truth of this assertion is questionable, at best, under *Buckley*. When 25% of activity is the threshold for triggering political committee status, as under the Rules,[17] the regime is *certainly* unconstitutional.

Like the Supreme Court, multiple federal courts of appeals have adopted this approach in considering the constitutionality of various political committee statutes and regulations. In *New*

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[9] *Buckley v. Valeo*, 424 U.S. 1 at 42-44 (1976).
[10] *Id.* at 79.
[11] *Id.*
[12] *Id.*
[13] *Id.*
[14] *N.M. Youth Organized v. Herrera*, 611 F.3d 669, 677 (10th Cir. 2010) (quoting *Buckley* at 79) (emphasis supplied); *EMILY's List v. FEC*, 581 F.3d 1, 16 n.15 (D.C. Cir. 2009) (noting in First Amendment challenge to FEC regulations governing how nonprofits raise and spend money for political speech that such "regulations apply only to those non-profits that must register with the FEC as political committees—namely, groups that receive or spend more than $1000 annually for the purpose of influencing a federal election and whose 'major purpose' involves federal elections.") (citing *Buckley* at 79).
[15] *Cal Pro-Life Council, Inc., v. Getman*, 328 F. 3d 1088, 1104 n. 21 (9th Cir. 2003) (quoting *FEC v. Mass. Citizens for Life, Inc.*, 479 U.S. 238, 251 (1986)).
[16] Proposed Rules § 20.1(20)(A)
[17] Proposed Rules § 20.1(20)(B); (C).

Mexico Youth Organized v. Herrera ("*NMYO*"),[18] for example, the Tenth Circuit held that New Mexico's definition of "political committee" had to satisfy "the major purpose test."[19] The facts were not atypical: NMYO, a nonprofit, worked with another nonprofit, Southwest Organizing Project, to disseminate mailings. Both nonprofits had a history of public education on issues relating to youth, equality, and government transparency issues.[20] The mailings suggested that certain legislators were beholden to health insurance interests, noting that those legislators' donors included health insurance companies.[21] Both nonprofit organizations spent a relatively small portion of their respective budgets on the mailings: $15,000 out of $225,000 for NMYO, and $6,000 out of $1.1 million for Southwest Organizing Project.[22]

The Tenth Circuit, using *Buckley* as a guide, held that the state's political committee definition could "only encompass organizations that are under the control of a candidate or *the major purpose of which* is the nomination or election of a candidate."[23] Because neither NMYO nor Southwest Organizing Project spent "a *preponderance* of its expenditures on express advocacy or contributions to candidates,"[24] neither could be regulated as a political committee. This "preponderance" standard is far higher than the 25% threshold in the Proposed Rules.

Similarly, in 2012, the *en banc* Eighth Circuit struck down a Minnesota law that required independent expenditure funds to have "virtually identical regulatory burdens" to political committees.[25] This included filing periodic reports, even if the fund no longer engaged in political activity. Ultimately, *Swanson* held that only political organizations could constitutionally be subject to such a burden—not organizations without such a major purpose.[26]

Even the most lax reading of the major purpose test imposes a far higher bar than the Proposed Rules. In *Human Life of Washington v. Brumsickle*, the Ninth Circuit considered the "major purpose test" in the context of an organization opposed to euthanasia.[27] Under *Brumsickle*, finding a "primary purpose" of political advocacy was sufficient to trigger political committee status. But this was precisely *because* the statute already limited political committee regulation to groups who made political activity a priority, and a significant portion of their overall activity:

> The Disclosure Law does not extend to all groups with "a purpose" of political advocacy, but instead is tailored to reach only those groups with a "primary"

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[18] 611 F.3d 669.
[19] *Id.* at 677.
[20] *Id.* at 671.
[21] *Id.* at 671-72.
[22] This amounts to approximately 6.7% of NMYO's budget and 0.5% of Southwest Organizing Project's budget.
[23] *Id.* at 677 (quoting *Buckley*, 424 U.S. at 79) (emphasis added).
[24] Furthermore, the statute at issue in *NMYO* provided that $500 of expenditures a year is "sufficient" to render an organization's "major purpose" political. 611 F.3d at 678 (citing N.M. STAT. ANN. § 1-19-26(L)). Notably, the Tenth Circuit also held that a monetary trigger was not constitutionally sufficient as a stand-in for "the major purpose" test. *Colorado Right to Life Committee, Inc. v. Coffman*, 498 F.3d 1137, 1154 (10th Cir. 2007). The *NMYO* Court applied *Colorado Right to Life Committee* and held the $500 trigger unconstitutional. *Id.* at 679. Thus, there are now two Tenth Circuit rulings rejecting a monetary trigger as a stand-in for a "major purpose" finding.
[25] *Minnesota Citizens Concerned for Life, Inc. v. Swanson*, 692 F.3d 864, 872 (8th Cir. 2012).
[26] *Id.*
[27] 624 F.3d 990, 995 (9th Cir. 2010).

> purpose of political activity. This limitation ensures that the electorate has information about groups that make political advocacy a priority, without sweeping into its purview groups that only incidentally engage in such advocacy. Under this statutory scheme, *the word "primary"—not the words "a" or "the"—is what is constitutionally significant.*[28]

C. The Proposed Rules' definition of "principal purpose" is too broad to constitutionally trigger the burdens attendant to political committee status.

The Proposed Rules' definition of "principal purpose" is different from S.B. 346's definition, but it suffers from similar problems. This is because it imposes political committee status before an entity participates in a sufficient quantity of political activity. The Proposed Rules would impose this status once 25% of a group's contributions or expenditures are political, while S.B. 346 would have done so after $25,000 worth of such contributions or expenditures.[29] The precedent outlined above makes clear that *neither* of these definitions is sufficient to impose the burdens applicable to political committees under Texas law.

Indeed, under the Proposed Rules, if 25% of an organization's contributions or expenditures are "political," the group becomes regulated as a general purpose committee, regardless of the character and scope of its other activities. This blurs the distinction between groups that exist for political purposes, and groups that do not but nevertheless happen to incidentally engage in activity that implicates an election. This distinction is foundational to First Amendment protections. The Proposed Rules would significantly expand the reporting requirements of organizations that do not have a major purpose of influencing elections, and are thus unconstitutional. The Proposed Rules cannot avoid a foundational distinction by redefining a term of art—"major purpose"—as something less than the Constitution requires.

II. Even if it were constitutional in scope, the Proposed Rules' definition of "principal purpose," is rendered unconstitutional by vagueness elsewhere in the Rules.

Another core principle of constitutional law is that people of reasonable intelligence must be able to ascertain which laws apply to them, and what those laws prohibit. Poorly drafted laws, which do not provide this guidance, are unconstitutionally vague. Even if the Proposed Rules' threshold for political committee status were constitutional, the factors considered for establishing that status are impermissibly vague.

The *Buckley* Court put the danger of vague laws into perspective in this specific First Amendment context:

> No speaker, in such circumstances, safely could assume that anything he might say upon the general subject would not be understood by some as an invitation. In short, the supposedly clear-cut distinction between discussion, laudation, general

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[28] 624 F.3d at 1011 (quoting *North Carolina Right to Life v. Leake*, 525 F.3d at 328 (Michael, J., dissenting) ("The key word providing guidance to both speakers and regulators in 'the major purpose' test or 'a major purpose' test is the word 'major,' not the article before it.") (emphasis supplied)).

[29] S.B. 346, Texas Legislature 83R - 2013, p. 1 at ln. 23-24; p. 2 at ln. 1.

> advocacy, and solicitation puts the speaker in these circumstances wholly at the mercy of the varied understanding of his hearers and consequently of whatever inference may be drawn as to his intent and meaning...Such a distinction offers no security for free discussion. In these conditions it blankets with uncertainty whatever may be said. It compels the speaker to hedge and trim.[30]

This language highlights the vagueness problem in the Proposed Rules' description of covered activity: under the Rules, it is unclear what counts as political advocacy. That is, "political expenditures" trigger political committee status, but the Proposed Rules do not define this term. While the underlying statute does provide a definition, that definition is unconstitutionally vague.

Under the statute, "'[p]olitical expenditure' means a campaign expenditure or an officeholder expenditure."[31] The most relevant phrase in this definition is "campaign expenditure." Under State law, "'[c]ampaign expenditure' means an expenditure made by any person in connection with a campaign for an elective office or on a measure. Whether an expenditure is made before, during, or after an election does not affect its status as a campaign expenditure."[32]

It is not at all clear what activities the phrase "in connection with a campaign" would encompass. To eliminate unconstitutional vagueness, the Rules should clearly define what activities are covered, such as contributions to candidates or parties, or express advocacy in support of or opposition to any candidate. Indeed, *Buckley* itself turned upon vagueness in the phrase "relative to a clearly identified candidate" to draw the distinction between "express advocacy" and speech that could not trigger PAC-style burdens.[33]

The Rules also require determination, in the case of contributions, of the "reasonable expectation of the contributor."[34] In the first instance, it is difficult to discern a contributor's subjective expectation. Adding the modifier "reasonable" to this expectation does nothing to clarify it. The factors to be considered in determining this expectation are similarly vague, and include a group's "public statements," (a term which is not defined, quantified, or cabined), their "government filings and organizational documents" (although the Proposed Rules do not specify whether these are filed pursuant to Texas or federal law, or both), and their "other activities."

The vagueness of these terms is self-evident. It is also unreasonable to expect contributors to examine "government filings and organizational documents," an activity only lawyers and bureaucrats might consider normal. This "reasonable expectation" test is insufficient to trigger a burdensome and speech-suppressing regime, and has dangerous potential to lead to gamesmanship, selective enforcement, and general public confusion. These results, too, demonstrate the Proposed Rules' unconstitutionality.

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[30] 424 U.S. at 43 (quoting *Thomas v. Collins*, 323 U.S. 516 (1945))
[31] Tex. Elec. Code § 251.001(10).
[32] Tex. Elec. Code § 251.001(7).
[33] 424 U.S. at 43 ("The key operative language of the provision limits 'any expenditure...relative to a clearly identified candidate.' Although 'expenditure,' 'clearly identified,' and 'candidate' are defined in the Act, there is no definition clarifying what expenditures are 'relative to' a candidate. The use of so indefinite a phrase as 'relative to' a candidate fails to clearly mark the boundary between permissible and impermissible speech.")
[34] Proposed Rules, § 20.1(20)(B).

In the case of expenses, the Proposed Rules require consideration of similarly vague, undefined factors, including, for example, the "value of the time spent by the group's employees or volunteers."[35] Yet there is no explanation of how such time is valued—by the hour, based upon the minimum wage, based upon the volunteer's salary at his current or most recent job? What if the volunteer is a major public figure who commands high speaking or appearance fees?

Thus, even if a finding that contributions or expenditures constitute 25% of an organization's activity could constitutionally trigger political committee status—which it cannot—the Proposed Rules' means of measuring that activity are unconstitutionally vague. As written, they pose both a trap for the unwary and an inducement to the unprincipled.

III. The Proposed Rules' definition of "principal purpose" would result in "junk disclosure" by associating some donors with communications about which they have no knowledge, and which they may not support.

In addition to the foregoing constitutional problems, reporting under the Proposed Rules will mislead and confuse rather than enlighten voters and the public.

When someone donates to a political committee or party, he knows the funds will be used to win an election. The same is not true of donors to 501(c) membership organizations, trade associations, and other groups which may be subject to political committee regulation under the Proposed Rules. As a result, if a group decides to make political expenditures as a minority of its multiple activities, many of its donors could potentially be subject to public disclosure, regardless of whether their donations were earmarked or intended for any political purpose.

People give to associations and nonprofits not necessarily because they agree with everything those organizations do, or share every position those organizations take, but because on balance they think that a particular group provides a valuable service or represents an important viewpoint. To publicly associate contributing individuals with expenditures of which they have no advance knowledge (and may even oppose) is both unfair to donors and misleading to the public; it is "junk disclosure."

IV. Disclosure can result in harassment of individuals by their political opponents, and thus should be carefully balanced with the public's limited right to know how individuals spend their personal funds.

The desire to preserve privacy stems from an awareness that threats and intimidation of individuals because of their political views can pose a serious threat to First Amendment freedoms. Much of the Supreme Court's concern over compulsory disclosure lies in its consideration of this potential to chill individuals' association with other like-minded citizens, stifling their ability to speak. This is an outgrowth of a Civil Rights Era case, *NAACP v. Alabama*,[36] where the Court recognized that the government may not compel disclosure of a private organization's general membership or donor list. In recognizing the sanctity of the freedom to speak and associate anonymously, the Court noted, "it is hardly a novel perception

[35] Proposed Rules § 20.1(20)(C)(1).
[36] 357 U.S. 449 (1957).

that compelled disclosure of affiliation with groups engaged in advocacy may constitute as effective a restraint on freedom of association as [other] forms of governmental action."[37]

Similarly, it is easy to imagine a scenario in which a group takes a controversial stand—for or against same-sex marriage; for or against legal abortion; for or against given immigration measures; for or against animal or environmental protection laws. Donors may not agree with every stance, but may wish to support the organization as a whole. Nevertheless, they may decline to do so for fear of being linked with one specific stance they do not agree with. Donors might also be wary of associating with groups that have been linked with persons who have been publicly vilified for the causes and ideas they support, such as Charles Koch or George Soros.

CCP believes that the harassment problem is most effectively addressed by limiting opportunities for harassment. This is best achieved by crafting reporting requirements for those who contribute large sums to *political candidates,* and those who give to organizations whose *major purpose* is political advocacy—and not those working primarily on advocacy concerning a cause or a trade.

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In short, the Proposed Rules are constitutionally suspect because they ignore decades of jurisprudence regarding the need for a "major purpose" finding before burdensome political committee status may be imposed, and use vague definitions to trigger these requirements. Furthermore, the Proposed Rules would make disclosed information less meaningful by broadly associating contributors with political communications they may not support, while simultaneously subjecting many of these donors to potential harassment or financial harm.

CCP respectfully requests that the Commission reconsider these elements of the Proposed Rules, and thanks the Commission for the opportunity to comment. Recognizing that this area of the law is complex and difficult to navigate, CCP suggests the attached regulation as a constitutionally-permissible way to accomplish the goals of the Proposed Rules. If the Commission would find it helpful, an expert from our staff will be made available to discuss the attached proposal, testify before the Commission in person, or otherwise assist the Commission in modifying the Proposed Rules to comport with the Constitution. Should you have any questions or desire CCP's assistance, I would be pleased to hear from you at 703-894-6800 or amackin@campaignfreedom.org.

Very truly yours,

Anne Marie Mackin
Staff Attorney

Enclosure: Proposed Draft Rule

[37] 357 U.S. at 462.

Proposed Draft Rule

Submitted by the Center for Competitive Politics

§ 20.1. Definitions

(14) Political committee--Two or more persons that have as a principal purpose accepting political contributions or making political expenditures to support or oppose candidates, officeholders, or measures. The term does not include a group composed exclusively of two or more individual filers or political committees required to file reports under Election Code, Title 15 (concerning Regulating Political Funds and Campaigns), who make reportable expenditures for a joint activity such as a fundraiser or an advertisement.

(A) An organization is not a political committee if it accepts political contributions totaling $500 or less in any calendar year or makes or authorizes political expenditures totaling $500 or less.

(B) If an organization has more than one purpose, it is a political committee if:

(i) its principal purpose, as stated in its charter, articles of incorporation, or bylaws, is to support or oppose candidates, officeholders, or measures;

(ii) it is under the control of any candidate, political committee or political party; or

(iii) its principal purpose, as evidenced by activities in which the organization actually engages and as measured by 20.1(14)(C), is to support or oppose candidates, officeholders, or measures.

(C) (i) Political committee activities means:

(1) Monetary or in-kind contributions to any organization that is exempt under Section 527 of the Internal Revenue Code, including, but not limited to any:

(a) political party,

(b) political committee,

(c) candidate committee,

(d) campaign committee that supports or opposes the recall of any elected state or local official, including efforts to bring about a recall election through the gathering of names on a petition or petitions, or

(e) campaign committee to support or oppose the retention of any elected state or local official or judge.

(2) Expenditures for any public communication that expressly advocates the election, nomination, defeat, recall or retention of a clearly identified candidate or elected official or measure, and that is required to be reported to the Federal Election Commission (FEC), the Texas Ethics Commission or similar state or local authority in accordance with valid federal or state laws or regulations.

(3) Expenditures for communications that in express terms call for the election or defeat of candidates affiliated with any federal, state or local political party such as "Vote Democratic," "Vote Republican", "Turn Texas Blue", "Keep Texas Red", "Say No to Democrats on [date of election]," "Say No to Republicans on [date of election]," or communications of party slogan(s) or individual word(s), which in the context of only the communication itself can have no other reasonable meaning than to urge the election or defeat of one or more candidate(s) affiliated with a federal, state or local political party.

(4) Expenditures for facilitating the making of contributions to a political committee.

(5) Expenditures or the fair-market value for use of the assets of the organization for candidate or party appearances, voter registration, get-out-the-vote drives or distribution of voter guides, unless done in a non-partisan and neutral manner between candidates or between positions on measures.

(6) The direct fund-raising expenditures in support of political committee activity as defined in subsections (1)-(5) of this section.

(7) The direct fund-raising expenditures for a separate segregated fund established under 2 U.S.C. 441b(b)(2)(C) or any similar state law.

(8) Direct or indirect contributions or grants to any person or entity if it is earmarked for purposes as described in 20.1(14)(C)(i)(1-7).

(ii) Principal purpose. An organization has a principal purpose of accepting political contributions or making political expenditures for any taxable year in which its program service expenses for political committee activities, as defined in 20.1(14)(C)(i)(1-8), equal or exceed 50% of total program service expenses. If the organization files a Form 990 with the Internal Revenue Service, program service expenses shall equal the amount reported on line 4e of Part III of Form 990, or as it appears on successor forms.

(1) Volunteer time. For the purpose of this paragraph 20.1(14)(C)(ii), program service expenses shall not include volunteer time.

(2) Grants and contributions. For the purpose of the calculation in this paragraph 20.1(14)(C)(ii), grants and contributions shall be treated as follows:

(a) A grant or contribution made to an organization as described in section 501(c)(3) shall count as a program service expense and not as a political committee activity unless the grant is made in support of political committee activity on a measure.

(b) A grant or contribution for any activity as described in 20.1(14)(C)(i) shall count as a program service expense for political committee activity.

(c) If the organization making a grant or contribution takes reasonable steps to ensure that the transferee does not use such funds for political committee activity, such grant or contribution shall not be treated as a political committee activity for purposes of a finding of "principal purpose" as defined in § 20.1(14)(C)(ii) of this paragraph.

(d) All other grants and contributions to any other organization in the United States exempt from taxation shall not be counted as a program service expense for the purpose of the calculation in § 20.1(14)(C)(ii) of this paragraph.