

END NOTES

- 1 Delaware Strong Families v. Denn, 136 S. Ct. 2376, 2376 (2016) (Thomas, J. dissenting from denial of certiorari).
- 2 Brice S. McKeever and Sarah L. Pettijohn, "The Nonprofit Sector in Brief 2014, The Center on Nonprofits and Philanthropy at the Urban Institute," October 2014, at 3, <http://www.urban.org/sites/default/files/alfresco/publication-pdfs/413277-The-Nonprofit-Sector-in-Brief--.PDF>.
- 3 The tax code defines 501(c)(3) organizations as follows: "corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals." 26 U.S.C. § 501(c)(3).
- 4 Section 501(c)(3) nonprofits are prohibited from "participat[ing] in, or interven[ing] in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office." 26 U.S.C. § 501.
- 5 See Jon Riches, "The Victims of Dark Money Disclosure: How Government Reporting Requirements Suppress Speech and Limit Charitable Giving," Goldwater Institute, 13-15, <http://goldwaterinstitute.org/en/work/topics/constitutional-rights/free-speech/the-victims-of-dark-money-disclosure-how-governmen/>.
- 6 See note 1, *supra*.
- 7 News Journal Editorial Board, "Editorial: News Journal Endorses Major Delaware Races," *Delaware News Journal*, November 4, 2016, <http://www.delawareonline.com/story/opinion/editorials/2016/11/04/editorial-news-journal-endorses-major-delaware-races/93300964/>.
- 8 See <http://www.gannett.com/who-we-are/>.
- 9 DEL. CODE ANN. tit. 15, § 8002(10)(b)(3).
- 10 558 U.S. 310, 353-54 (2010).
- 11 James Madison, "Letter to William T. Barry," August 4, 1822, Jack Ravoe, ed., *James Madison: Writings* (New York: Library of America, 1999), 790.
- 12 Ben Bagdikian, *The Media Monopoly* (5th ed. 1997), xiii.
- 13 Kevin Wilson, "13 Brands You Didn't Know Were Owned by Disney," *Screenrant.com*, January 21, 2016, <http://screenrant.com/disney-owned-brands-properties-trivia/?view=all>.
- 14 Anita Balakrishnan, "What Does Rupert Murdoch Own? A Little Bit of Everything," *USA Today*, June 11, 2015, <http://www.usatoday.com/story/money/business/2015/06/11/what-rupert-murdoch-owns/71089066/>; see also Richard Hansen, "Campaign Finance Laws and the Rupert Murdoch Problem," *Texas Law Review* 77 (June 1999): 1627, 1628.
- 15 Rick Edmonds et al., "Newspapers: By the Numbers," Pew Research Center, May 7, 2013, <http://www.stateofthemediamedia.org/2013/newspapers-stabilizing-but-still-threatened/newspapers-by-the-numbers/>.
- 16 NAACP v. State of Ala. ex rel. Patterson, 357 U.S. 449, 462 (1958).
- 17 Tillman Act, ch. 420, 34 Stat. 864; Citizens United v. FEC, 558 U.S. 310, 433 (2010).
- 18 Pub. L. No. 80-101, 61 Stat. 136 (1947).
- 19 Pub. L. No. 93-443, tit. 2, § 201, 88 Stat. 1263 (1974).
- 20 2 U.S.C. § 434 (f)(3)(A)(i)(I)-(II)(aa)(bb). The law defined electioneering communication as any broadcast, cable, or satellite communication which "(I) refers to a clearly identified candidate for Federal office; (II) is made within (aa) 60 days before a general, special, or runoff election for the office sought by the candidate; or (bb) 30 days before a primary or preference election, or a convention or caucus of a political party that has authority to nominate a candidate, for the office sought by the candidate."
- 21 2 U.S.C. § 441d(a)(3).
- 22 *Ibid.*, § 434(f)(1),(2).
- 23 *Ibid.*, § 431(9)(B)(i).
- 24 52 U.S.C. § 30101(9)(B)(i).
- 25 *Ibid.*, 30101(4); § 30104.
- 26 "Defining the Press Exemption from Campaign Finance Restrictions," *Harvard Law Review* 129 (2016): 1384, 1388-89.
- 27 26 U.S.C. § 501(c)(3).
- 28 Lesley Rosenthal, *Good Counsel: Meeting the Legal Needs of Nonprofits* (Hoboken: Wiley, 2012), 5-6.
- 29 The 501(h) election permits 501(c)(3) organizations to engage in limited lobbying so long as it does not constitute a substantial part of the organization's activities.
- 30 MO. ANN. STAT. § 130.011 (emphasis added).
- 31 *Ibid.*, § 130.041.
- 32 Timothy Sandefur, *The Permission Society* (New York: Encounter, 2016), 78-80.
- 33 The FEC voted 6-2 not to prosecute the man. Bradley A. Smith, "Campaign Finance Reform: Searching for Corruption in All the Wrong Places", *Cato Supreme Court Review* 187 (2002-2003): 187-88, <https://www.cato.org/supreme-court-review/2002-2003>.
- 34 Sandefur, 81-82.
- 35 Sandefur, 79.
- 36 Center for Competitive Politics v. Harris, 784 F.3d 1307 (9th Cir. 2015). In 2015, the Goldwater Institute was ordered by the attorney general of California to disclose the identities of its supporters. It declined to do so, but the Attorney General's Office has not withdrawn its demand.
- 37 DEL. CODE ANN. tit. 15, § 8031(d).
- 38 *Ibid.*, § 8031(a).
- 39 *Ibid.*, §§ 8002(10)(a), 8002(27).
- 40 MO. ANN. STAT. § 130.041.
- 41 *Ibid.*, § 130.011.
- 42 DEL. CODE ANN. tit. 15, § 8031(d).
- 43 *Ibid.*, § 8002.
- 44 See, e.g., Thomas Kaplan, "Nonprofits Are Balking at Law on Disclosing Political Donors," *New York Times*, August 20, 2013, <http://www.nytimes.com/2013/08/21/nyregion/citing-safety-nonprofits-balk-at-law-on-disclosing-donors.html>; Halimah Abdullah and Matt Smith, "Outside Political Donors Still Shrouded in Smoke," *CNN.com*, July 18, 2012, <http://www.cnn.com/2012/07/18/politics/campaign-finance/>.
- 45 See, e.g., ALASKA STAT. ANN. § 15.13.400; ARK. ADMIN. CODE ANN. § 153.00.2-200; GA. CODE ANN. § 21-5-3; HAW. REV. STAT. ANN. § 11-302.
- 46 B. 246, 77th Leg. (Nev. 2013).
- 47 NEV. REV. STAT. ANN. § 294A.0055 (emphasis added).
- 48 *State of Nevada Committee for Political Action (PAC) Information Sheet*, Secretary of State Barbara K. Cegavske, <http://nvsos.gov/sos/elections/party-committee-information/committees-for-political-action-pac>.
- 49 558 U.S. 310, 433 (2010).

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- 50 *Delaware Strong Families*, 136 S. Ct. 2376 (2016).
- 51 *Citizens United*, 558 U.S. at 352-54.
- 52 424 U.S. 1 (1976).
- 53 *Ibid.*, at 23-25.
- 54 *Ibid.*, at 50.
- 55 *Citizens United*, 558 U.S. at 365-66.
- 56 *Nixon v. Shrink Mo. Gov't PAC*, 528 U.S. 377, 389 (2000) (quoting *FEC v. National Conservative Political Action Comm.*, 470 U.S. 480, 497 (1985)).
- 57 561 U.S. 186, 197 (2010).
- 58 *Citizens United*, 558 U.S. at 349-56.
- 59 *Buckley*, 424 U.S. at 66-68 (internal citations omitted) (emphasis added).
- 60 435 U.S. 765, 781-82, (1978) (internal citations omitted).
- 61 *Ibid.*, at 782, n.18.
- 62 494 U.S. 652, 668 (1990) (citations omitted).
- 63 See Jason M. Shepard, *Campaigning as the Press: Citizens United at the Problem of Press Exemptions in Law*, August 15, 2011, <http://ssrn.com/abstract=1910028>.
- 64 558 U.S. at 319-321.
- 65 *Ibid.*, at 352.
- 66 *Ibid.*, at 352-53.
- 67 *Turner Broad. Sys., Inc. v. F.C.C.*, 512 U.S. 622, 659 (1994).
- 68 Alexis Tocqueville, *Democracy in America* (1840), 601.
- 69 The social and economic impact of 501(c)(3)s in the United States is sizeable. According to the Urban Institute, 501(c)(3) public charities reported \$1.65 trillion dollars in revenue in 2012, though the vast majority (66.4 percent) had less than \$500,000 in gross receipts. It is estimated that the nonprofit sector contributed \$887.3 billion dollars to the U.S. economy in 2012, and employed millions of Americans—both for compensation and as volunteers. See Brice S. McKeever and Sarah L. Pettijohn, “The Nonprofit Sector in Brief 2014,” The Center on Nonprofits and Philanthropy at the Urban Institute, October 2014, at 3, <http://www.urban.org/sites/default/files/alfresco/publication-pdfs/413277-The-Nonprofit-Sector-in-Brief--.PDF>.
- 70 Potter Stewart, *Or of the Press*, 26 HASTINGS L.J. 631, 634 (1975).
- 71 *Lovell v. City of Griffin*, 303 U.S. 444, 452 (1938).
- 72 558 U.S. at 351-52.
- 73 Sonja R. West, “The Media Exemption Puzzle of Campaign Finance Laws,” *University of Pennsylvania Law Review* 164 (2016): 256, n. 60.
- 74 DEL. CODE ANN. tit. 15, § 8031(a).
- 75 *Ibid.*, § 8002.
- 76 *Delaware Strong Families*, 136 S. Ct. at 2376; DEL. CODE ANN. tit. 15, § 8031(a).
- 77 *Delaware Strong Families*, 136 S. Ct. at 2377 (Thomas, J., dissenting from denial of certiorari) (internal citations omitted).
- 78 *Ibid.*
- 79 *Ibid.*, at 2376.
- 80 *Ibid.*, at 2377.
- 81 *Patterson*, 357 U.S. at 462.
- 82 *Ibid.*
- 83 *Ibid.*
- 84 135 S.Ct 2218 (2015).
- 85 *Ibid.*
- 86 *Ibid.*, at 2230 (internal citations omitted).
- 87 *Ibid.*
- 88 *Ibid.*
- 89 ProPublica, a nonprofit organization specializing in investigative journalism, was awarded the 2017 Pulitzer Prize for public service—one of four Pulitzers the group has won in the past seven years.
- 90 H.R. Rep. No. 93-1239, at 4 (1974) (emphasis added).
- 91 558 U.S. at 326.
- 92 *Defining the Press Exemption, supra* at 1393, note 26.
- 93 *Ibid.*, at 1393-94.
- 94 FEC Advisory Opinion, AO 2004-30.
- 95 Shepard, *supra*. at 139, note 63; see also FEC Advisory Opinion, AO 2010-08.
- 96 See <https://www.texastribune.org/about>.
- 97 *Buckley*, 435 U.S. at 781-82.