

LINCOLN CHARITABLE TRUST

Of, By, and For the People™

Internal Operating Procedures

Trust Agreement

Pennsylvania Uniform Trust Act

2020 Edition

Hon. Peter J. Wirs
Trustee

LINCOLN CHARITABLE TRUST

Of, By, and For the People™

The Lincoln Charitable Trust is established to protect the First Amendment rights guaranteed to all American voters to participate in the party of their choice to assure government of the people, government by the people, and government for the people

www.LincolnCharitableTrust.org

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<p style="text-align: center;">Cite as IOP Rule _____ (2019)</p>

Table of Contents

Part I. Scope and Organization of Rules	1
Explanatory Comment.	1
Rule 1 Scope and Organization of Rules.	1
(a) Scope	1
(b) Amendment, Suspension	1
(c) Definitions	1
Explanatory Comment.	1
Part II. Trust Administration	2
Explanatory Comment.	2
Rule 2 The Trust Property	2
(a) Scope	2
(b) Purpose	2
(c) Trust Property Definitions	2
(d) Description	2
(e) Structure, Distinctions and Features	3
(f) Public Portals	3
(g) MyVoterPage.com	3
(h) Data Capturing	4
(i) Individual Data	4
(j) District Data	5
(k) EULA	6
(l) Voter Validation	12
Explanatory Comment.	12
I. Definition of a Trust, Fiduciary Relationship	12
II. Nature of Trust Property	12
III. The Specific Cause/Doctrine	12
IV. Protecting First Amendment Right of Association	12
V. Preventing Usurpation of Party Officeholders	13
VI. Trust Property Facilitating CIIM	13
VII. Voter Registration by State	14
Rule 3 The Trustee	15
(a) Scope	15
(b) Powers and Duties	15
(c) Compensation, Reimbursement of Expenses	15
(d) Prohibited Conduct	15
(e) Presumption Governing PASO Activities	16
Explanatory Comment.	16
I. Duties of Trustees Generally	16
II. Duty to Act Impartially	16
III. Duty of Loyalty and The Rule of Strict Prohibition	17
IV. Compensation	17
Rule 4 Beneficiaries	18
(a) Scope	18
(b) Definition of Beneficiary per State charitable solicitation laws	18
(c) Registration	18
(d) Grievance Resolution Procedures	18
(e) Eligibility for Distribution of Earmarked Funds by the Trustee	19
(f) Liability for Reporting as Contribution	20
(g) Service of Process, Notices under Law	20
Explanatory Comment.	20
I. Beneficiary Standards of Conduct	20
II. Election to Bypass Committees	20
III. Closed and Open Primaries by State	21
IV. Election Cycles by State	22
V. Exemption from Charitable Solicitation Registration	25
Part III. Trust Finances	27
Explanatory Comment.	27
Rule 5 Accounts and Depository Matters	27
(a) Scope	27
(b) Trust Administration Account	27

	(c) Trust Endowment Account	27
	(d) Escrow Accounts	27
	(e) Processing Campaign and Levin Fund Contributions.....	27
	(f) Disclosure Statement	28
	(g) Fund Raising Ratios	29
	Explanatory Comment.....	29
	I. Scope	29
	II. FAS 116.....	29
	III. Conduit Fund Raising	31
	IV. Levin Fund Campaign Contributions	31
	V. Levin Fund Contribution Limits	31
	VI. Distributions and Set Offs	32
	VII. Fund Raising & Fund Raising Ratios.....	32
	VIII. FAS No. 117	32
	IX. Definition of Endowment Fund	32
Rule 6	Attribution and Distribution	34
	(a) Scope	34
	(b) Distribution of Attribution	34
	(c) Number of Federal and non-Federal Candidates	34
	(d) Attribution Process	34
	(e) Restrictive Contributions	34
	(f) Recognition of Assets and Value	34
	(g) Distribution to Qualified Beneficiaries	35
	Explanatory Comment.....	35
	I. Scope	35
	II. Attribution.....	35
	III. State Campaign Finance Laws.....	35
	IV. Fair Market Value	37
	V. Distribution of Beneficiary Basis	37
	VI. Definition of Undivided Fractional Interests	38
Rule 7	Supplementing Trust Assets	39
	(a) Scope	39
	Part I. Anti-Fat Cat Days™	39
	(b) Campaign.....	39
	(c) Referral Fees	39
	(d) General Party Contributions	39
	Part II. National Conference Calls™	40
	(e) We the People TODAY™ National Conference Calls™	40
	(f) Registering Call Participants	40
	(g) Programming	40
	(h) Agenda/ Public Policy Opinion Survey.....	41
	(i) Time Line and Program Format	41
	(j) Additional Information and Services	42
	Part III. Questions and Answers	42
	(k) Anti-Fat Days	42
	(l) National Conference Calls	42
	Part IV. General Information.	43
	(m) Trustee Warranty	43
	(n) Co-Beneficiary Fiduciary Duty	44
	Part V. Additional Charitable Activities.	44
	(o) Trust Support of other charities	44
	Explanatory Comment.....	44
	I. Scope	44
	II. Anti-Fat Cat Days™ Campaign	44
	III. National Conference Call Program	44
	IV. Format	44
	V. Registration.....	44
	VI. Purpose of the Conference Calls	44
Rule 8	Investment Policy Statement	45
	(a) Scope	45
	(b) Context	45
	(c) Standard of Care	45
	(d) Authority and Responsibility.....	46

	(e) Administrative and Review Process	47
	(f) General Investment Process	48
	(g) Investments in Special Projects or Programs	48
	(h) Component Portfolios	49
	(i) Selection of External Investment Managers	51
	(j) Termination of External Investment Managers	51
	(k) Benchmark Definitions	51
	Explanatory Comment.	51
Part IV. Trust Property Election Cycle Usage		53
	Explanatory Comment.	53
Rule 9	Trust Property Usage.	53
	(a) Scope	53
	Part I. Background Information	53
	(b) Compliance with The Lincoln Rule	53
	(c) What is Rule Covers	53
	(d) What You Should Expect from <i>We the People Today</i> ™	53
	(e) Voter Measurement Indices	54
	(f) Optimal Voter Data	54
	Part II. Data Collection Requirements	54
	(g) Software Administration	54
	(h) Collecting Historical Election Data	55
	(i) Collecting Voter Profile Data	55
	Part III. Precinct Election Cycle Use	56
	(j) Operational Premises	56
	(k) Start of and During Election Cycle	57
	(l) Use During Pre-Election GOTV Efforts	58
	(m) Use During Election-Eve	58
	(n) Use Before Polls Open.	58
	(o) Use While Polls Open	59
	(p) Use After Polls Close.	59
	Part IV. Questions and Answers	59
	(q) Questions and Answers	59
	Explanatory Comment.	59
	I. Election Day Whip™	59
Part V. NCOPO		65
	Explanatory Comment.	65
Rule 10	NCOPO	65
	(a) Scope	65
	(b) Purpose	65
	(c) Programs	65
	(d) Uniform Codes and Standards Mission Statement	65
	(e) Eligibility	65
	(f) Model Code of Official Conduct Incorporation by Reference	65
	(g) Membership	65
	(h) Governance	66
	(i) Conflicts of Interest, Disclosure Required, Recusal from Vote	66
	(j) Seal, Trademark, Flag	66
	(k) Liability and Indemnification	66
	(l) Definitions	68
	Explanatory Comment.	69
	I. Manner of Participation	69
	II. Membership	69
	III. Definitions.	69
Rule 11	Panel Code Drafting Procedures	70
	(a) Scope	70
	Part I. Business of the Panels	70
	(b) Panels, Membership, Powers and Duties	70
	(c) Procedure for Empaneling	70
	Part II. Editorial Provisions	71
	(d) Editorial Preparation of Drafts	71
	(e) Division of Text.	72
	(f) Preparation of Comment, History and Cross References.	72
	(g) Concurrence or Dissent	72

	(h) Contents of Comment	72
	(i) Editorial Style of Comment	72
Rule 12	Model Codes and Standards, Advisory Opinions, Mediation Services	72
	(a) Model Codes and Standards.	72
	(b) Advisory Opinions and Interpretations	73
	(c) Nonpartisan Mediation	73
	(d) Requirements for Model Codes	73
	(e) Avoidance of Conflict with Certain Other Bodies; Cooperation	73
	(f) Standard Development Process	73
	(g) Use of Model Codes	74
	(h) Conditions Precedent Notices and Disclaimers	74
	(i) Copyrights	75
	(j) Exceeding Minimal Requirements and Equivalency	76
Rule 13	Legislative and Regulatory Ratings	77
	(a) Scope of Rule.	77
	Part I. Matters subject to Ratings	77
	(b) Appearances and Admissions, Parties Registration	77
	Part II. Ratings Criteria	77
	(c) “A” Rating Criteria	77
	(d) “B” Rating Criteria	77
	(e) “C” Rating Criteria	77
	(f) “D” Rating Criteria	77
	(g) “E” Rating Criteria	77
Rule 14	Procedures	79
	(a) Scope of Rule.	79
	Part I. Business of the Conference and Panels	79
	(b) Appearances and Admissions, Parties Registration	79
	(c) Filings	80
	(d) Form of Motions and Submittals	80
	(e) Service.	81
	Part II. Initiation of Proceedings	82
	(f) Notice to Develop	82
	(g) Content of Notice.	82
	(h) Request for Advisory Opinion	82
	(i) Review.	82
	Part III. Hearings and Submittals	82
	(j) Prompt Convening of Hearing	82
	(k) Continuances	82
	(l) Conduct of Hearings.	83
	(m) Evidentiary Rules	83
	(n) Panel Chairman’s Duties	84
	(o) Restrictions on Duties of Chair	84
	(p) Manner of Conduct of Hearings	84
	Part IV. Adjudication	84
	(q) Evidence of Consensus	84
	(r) Contents of Advisory Opinions	84
	(s) Notice of Right of Appeal by Right	84
	Part V. Appeals	84
	(t) Applicability of Uniform Arbitration Act	84
	(u) Appeal of Right	85
	(v) Discretionary Appeal.	85
	(w) Time for Taking Appeal	85
	(x) Filing of Answer and Traverse	85
	(y) Scheduling of Hearing	85
	(z) Filing and Contents	85
	(aa) Oral Arguments	85
Part VI. Related Administrative Matter	86
	Explanatory Comment.	86
Rule 15	Annual Reports, Notice to Attorney General, Miscellaneous Matters.	86
	(a) Scope	86
	(b) Contents of Notice	86
	(c) Notice to Attorney General	86
	(d) Copyright and Trademarks	86

Explanatory Comment	86
I. Annual Report	86
II. Attorneys General	86
The Trust Instrument	87
Explanatory Comment	87
ARTICLE I - PURPOSE AND RE	87
¶ 1. Name of Trust	87
¶ 2. Purpose of Trust	87
¶ 3. Life of Trust	88
¶ 4. Original Trust Res.	88
¶ 5. Additions to the Trust Res	88
¶ 6. Retention of the Property Character	88
¶ 7. Private Benefit and Advocacy Prohibited.	88
¶ 8. Distributional Requirements of Trust Property	89
¶ 9. Rights of Amendment	91
¶ 10. Spendthrift Clause	91
ARTICLE II - THE TRUSTEE	91
¶ 11. Trustee	91
¶ 12. Organization, Appointment, Death or Resignation or Removal of Trustee	91
¶ 13. Change in Trusteeship	92
¶ 14. Limitations on Duties with Respect of Successor Trustee	92
¶ 15. Trust Management	92
¶ 16. Inclusion of Prudent Man Rule	93
¶ 17. Intent of Settlor, Conflicts of Interests, Disclosure, Compliance with Applicable Standards	94
¶ 18. Duty to Inform	94
¶ 19. Trustee Compensation and Reimbursement of Expenses	94
¶ 20. Appointment of Agents and Independent Auditors.	95
¶ 21. Authority to Grant Power of Attorney	95
¶ 22. Trust Expenses	95
¶ 23. Adjustment for Tax Consequences	95
¶ 24. Authorization and Limitations for Trustee to Modify Language	95
¶ 25. Right of Trustee to Petition Court.	96
ARTICLE III - GENERAL AND MISCELLANEOUS PROVISIONS	96
¶ 26. Situs of Trust, Offices	96
¶ 27. Communications, Delivery of Notices	96
¶ 28. Construction, Severability and Partial Invalidity	96
¶ 29. Copies, Counterparts.	96
¶ 30. Definitions	97
Applicable Provisions of the Uniform Trust Act	99
SUBCHAPTER A —GENERAL PROVISIONS	99
§ 7701. Short title of chapter - UTC 101	99
§ 7702. Scope of chapter - UTC 102	99
§ 7703. Definitions - UTC 103	99
§ 7704. Knowledge - UTC 104	100
§ 7705. Trust instrument controls; mandatory rules - UTC 105	100
§ 7706. Common law of trusts; principles of equity - UTC 106	100
§ 7707. Governing law - UTC 107	100
§ 7708. Situs of trust	100
§ 7709. Methods and waiver of notice - UTC 109	101
§ 7710. Notice; others treated as beneficiaries - UTC 110	101
§ 7710.1. Nonjudicial settlement agreements - UTC 111	101
§ 7710.2. Rules of construction - UTC 112	102
SUBCHAPTER B — JUDICIAL PROCEEDINGS	102
§ 7711. Role of court in administration of trust - UTC 201	102
§ 7712. Jurisdiction over trustee and beneficiary - UTC 202	102
§ 7713. (Reserved).	102
§ 7714. Venue - UTC 204	102
SUBCHAPTER C — REPRESENTATION	103
§ 7721. Scope; definition of trust matter	103
§ 7722. Representation of parties in interest in general.	103
§ 7723. Representatives and persons represented	103
§ 7724. Appointment of representative	104
§ 7725. Notice of representation	104

§ 7726. Representation ineffective if person objects	104
SUBCHAPTER D CREATION, VALIDITY, MODIFICATION AND TERMINATION OF TRUST	104
§ 7731. Creation of trust - UTC 401	104
§ 7732. Requirements for creation - UTC 402	104
§ 7734. Trust purposes - UTC 404	104
§ 7735. Charitable purposes; enforcement - UTC 405	104
§ 7740. Termination of trusts; proceedings for termination or modification of trusts - UTC 410	105
§ 7740.5. Reformation to correct mistakes - UTC 415	105
§ 7740.6. Modification to achieve settlor's tax objectives - UTC 416.	105
SUBCHAPTER E CREDITOR'S CLAIMS; SPENDTHRIFT AND DISCRETIONARY TRUSTS	105
§ 7741. Rights of beneficiary's creditor or assignee - UTC 501	105
§ 7742. Spendthrift provision - UTC 502	105
§ 7743. Exceptions to spendthrift provision - UTC 503	106
§ 7744. Discretionary trusts; effect of standard - UTC 504.	106
§ 7745. Creditor's claim against settlor - UTC 505	106
§ 7746. Overdue distribution - UTC 506.	106
§ 7747. Personal obligations of trustee - UTC 507	106
§ 7748. Property subject to power of withdrawal - UTC 505(b)	106
SUBCHAPTER F —REVOCABLE TRUSTS	106
SUBCHAPTER G —OFFICE OF TRUSTEE	106
§ 7761. Accepting or declining trusteeship - UTC 701	106
§ 7762. Trustee's bond - UTC 702.	107
§ 7763. Cotrustees - UTC 703	107
§ 7764. Vacancy in trusteeship; appointment of successor - UTC 704	107
§ 7765. Resignation of trustee; filing resignation	107
§ 7766. Removal of trustee - UTC 706.	107
§ 7767. Delivery of property by former trustee - UTC 707.	108
§ 7768. Compensation of trustee - UTC 708.	108
§ 7769. Reimbursement of expenses - UTC 709	108
§ 7770. Liability of successor trustee	108
SUBCHAPTER H —DUTIES AND POWERS OF TRUSTEE	108
§ 7771. Duty to administer trust - UTC 801	109
§ 7772. Duty of loyalty - UTC 802.	109
§ 7773. Impartiality - UTC 803.	110
§ 7774. Prudent administration - UTC 804	110
§ 7775. Costs of administration - UTC 805	110
§ 7776. Trustee's skills - UTC 806	110
§ 7777. Delegation by trustee	110
§ 7778. Powers to direct - UTC 808	110
§ 7779. Control and protection of trust property - UTC 809	110
§ 7780. Recordkeeping and identification of trust property - UTC 810	110
§ 7780.1. Enforcement and defense of claims - UTC 811	110
§ 7780.2. (Reserved).	111
§ 7780.3. Duty to inform and report	111
§ 7780.4. Discretionary powers.	111
§ 7780.5. Powers of trustees - UTC 815	111
§ 7780.6. Illustrative powers of trustee	111
§ 7780.7. Distribution upon termination	113
SUBCHAPTER I —LIABILITY OF TRUSTEES AND RIGHTS OF PERSONS DEALING WITH TRUSTEES	113
§ 7781. Remedies for breach of trust - UTC 1001.	113
§ 7782. Damages for breach of trust - UTC 1002	113
§ 7783. Damages in absence of breach - UTC 1003	113
§ 7785. Limitation of action against trustee	114
§ 7786. Reliance on trust instrument - UTC 1006.	114
§ 7787. Event affecting administration or distribution - UTC 1007	114
§ 7788. Exculpation of trustee - UTC 1008.	114
§ 7789. Beneficiary's consent, release or ratification - UTC 1009	114
§ 7790. Limitation on personal liability of trustee - UTC 1010	114
§ 7790.1. Interest as general partner - UTC 1011	115
§ 7790.2. Protection of person dealing with trustee - UTC 1012	115
§ 7790.3. Certification of trust - UTC 1013	115
SUBCHAPTER J —MISCELLANEOUS PROVISIONS.	116

§ 7791. Abandonment of property	116
§ 7797. Filing accounts	116
§ 7798. Failure to present claim at audit	116

Part I. Scope and Organization of Rules

Explanatory Comment

This Part concerns the scope and organization of rules, definitions and construction.

Rule 1 Scope and Organization of Rules.

- (a) **Scope.** — The following Internal Operating Procedures are adopted by the Trustee of the Lincoln Charitable Trust (the “Trust”) as supplementary to and for the purposes of implementing the Trust Agreement pursuant to the Uniform Trust Act, Act of July 7, 2006, P.L. 625, No. 98, 20 Pa.C.S. §§ 7701-7793.3 (“Uniform Trust Act”).
- (b) **Amendment, Suspension.** — These Internal Operating Procedures may be amended or suspended for just cause from time to time by the Trustee without notice as circumstances require.
- (c) **Definitions.** — The following terms, in addition to the terms under IOP Rule 2(c) shall have the following meaning, unless the context clearly provides otherwise:
- (1) “**Ancillary trustee**” shall mean any person appointed by the Trustee to act exclusively within a specific jurisdiction.
 - (2) “**Beneficiary**” shall mean all electors within the United States.
 - (3) “**Conduit**” shall mean acting as an intermediary for fund raising purposes as defined by Federal Election Commission.
 - (4) “**Current Beneficiary**” shall mean any person or entity not a Qualified Beneficiary, and shall include any person, including, but not limited to a financial contributor, significantly active with any Qualified Beneficiary.
 - (5) “**Current Official Beneficiary**”
 - (A) shall mean any elected public officeholder, or an appointed public officeholder of the first degree (who is appointed by an elected public official) and any candidate for elected office.
 - (B) The term shall also mean an attorney-at-law, a police or other law enforcement officer, and any firefighter or other first responder, salaried or volunteer.
 - (C) The term shall include any generally recognized association of public officials by classification, i.e., the National Association of Attorneys Generals.
 - (6) “**Current Organizational Beneficiary**”
 - (A) shall mean any social advocacy organization duly incorporated or organized consistent with the Internal Revenue Code under 26 U.S.C. § 501(c)(3), (4),(5) or (6) or 26 U.S.C. §

527 and otherwise engaged in protected First Amendment activity requiring participation by the general public.

- (B) The term includes candidate and non-candidate (petition) campaigns, candidate and leadership PACs, advocacy organizations and similarly situated entities who promote participatory democracy in furtherance of the Trust’s charitable mission.
- (7) “**FECA**” shall mean Federal Election Campaign Act of 1971 (“FECA”), Pub.L. 92-225, 86 Stat. 3, 2 U.S.C. § 431 *et seq.* as amended by e.g., the Bipartisan Campaign Reform Act of 2002, P.L. 107-155, 116 Stat. 81 (“BCRA”).
 - (8) “**HAVA**” shall mean the Help America Vote Act of 2002, Pub. L. No. 107-252, 116 Stat. 1666 (2002), 42 U.S.C. §§ 15301 to 15545.
 - (9) “**PASO**” is an acronym used by the Federal Election Commission meaning “Promote, Attack, Support or Oppose a Federal office candidate.”
 - (10) “**Qualified Beneficiary**” shall mean any regularly constituted national, state, county, municipal, ward, district and local committee of the Democratic or Republican Party and each elected member, jointly and severally.
 - (11) “**State Laws**” shall mean all campaign finance and election code statutes, regulations, rules and decisional law which govern campaign financing.
 - (12) “**Trust Property**” shall mean We the People Today™ Political Suite™ programs and the public portals and any future software application which may be incorporated, all of which may also be referred to as Software(s) or System or Website(s) interchangeable throughout these rules.
 - (13) “**Uniform Trust Act**” shall mean the Pennsylvania Uniform Trust Act, 20 Pa.C.S. § 7701-7799. Reference to the NCCUSL version is the “Uniform Trust Code.”

Explanatory Comment

This Rule establishes the Internal Operating Procedures as the principal means by which the Trustees administer the Trust Property, under the Trust Instrument and the Uniform Trust Act. These IOPs while always subordinate to the Trust Instrument and the Uniform Trust Act, are beneficial, because of the necessity of dealing with a large class of beneficiaries. To rely on individual representation jeopardizes the Trustee’s duties. Instead, the Trustee consolidate these directives for ready reference. The Penna. Attorney General expresses guidance that the IOPs are the trust’s equivalent of bylaws as such are defined under the Nonprofit Corporation Law.

Part II. Trust Administration

Explanatory Comment

This Part concerns the legal components of administering the Trust by the Trustees, ancillary trustees as well as defining the Trust Property and its components.

Rule 2 The Trust Property.

- (a) **Scope.** — The scope of this Rule is to provide a description of the Trust Property and to distinguish those components which are for generic campaign activity, 2 U.S.C. § 431(21), versus those components which are for Federal Election activity, 2 U.S.C. § 431(20), and those activities which are FECA’s press exemption rule. 2 U.S.C. § 431(9)(B)(i).
- (b) **Purpose.** — The copyrighted and trademark name of the Trust Property is We the People Today™ Political Suite™ program and its public portals, We the People Today.org™ and MyVoterPage.com™ websites and the purpose therein is as provided by Art. I, ¶ 2 of the Trust Agreement, to promote “the fullest degree of meaningful opportunity for all registered electors to participate in the political process by strategic association, and internal party accessibility, accountability and unity.”
- (c) **Trust Property Definitions.** — The following terms shall have the following meaning, unless the context clearly provides otherwise:
- (1) **“Competition Index”** (CI) is a voter measurement index generated by We the People TODAY™ on election results, measured in a decimal taken out four digits. A CI that is .5000 means a highly competitive district, county or state, anything above .5000 means stronger Democratic and anything lower than .5000 means stronger Republican.
 - (2) **“Election Whip”** is the feature within the Voter Module of We the People TODAY™ that (1) provides contact information which the precinct committee person either gathers or validates prior to Election Day and on Election Day (2) monitors whether the voter has shown up at the polls per his Re-PAT.
 - (3) **“Misaligned Voter”** means a voter registered one party, but who usually votes the other party.
 - (4) **“Partisan Competitive Index”** (“PCI”) is a voter measurement index generated by We the People TODAY™ on election results, measured by comparing the spread between the Democratic or Republican with the highest number of voters versus the Democratic or Republican with the lowest number of votes in any general election.
- (5) **“PAT”** shall mean a voter’s regular poll arrival time, i.e., the time of day when the voter customarily appears at his polling place. *See* New-PAT.
 - (6) **“Referral”** shall mean an inquiry, request or offer to contribute or volunteer from a voter that is generated by eWethePeople.™
 - (7) **“Re-PAT”** means a voter’s intended poll arrival time in the event the voter has failed to arrive at his regular (customary) poll arrival time. *See also* PAT.
 - (8) **“Turnout Loyalty Index”** (“TLI”) is a voter measurement index generated by We the People TODAY™ on election results, measured by dividing the number of votes obtained by the leading Democratic or Republican on the ticket by the number of total registered Democrats or Republicans.
 - (9) **“Validate”** or **“Validation”** shall mean the confirmation by the precinct committee person of data inputted by an individual voter through We the People Today.org™ public portal, to be confirmed as accurate and not constituting interference, i.e. “hacking” by unauthorized persons.
- (d) **Description.** —
- (1) We the People Today™ is a web-based Contact Relationship Manager (CRM) social-networking (SocNet) software as a service (SAAS) which imports names, etc., from commercial database into a shell to enable the end user to “append” (to add information to the database’s list) and “manage” (organize the data and its appended information) into a specialized House List to satisfy the end user’s requirements primary from State registration voting lists as required by HAVA and individually input data to be contributed by the registered voters and their committee persons, exclusively through WethePeople.org.™
 - (2) LincolnCharitableTrust.org™ is a public portal, by which the general public provides voter contact and demographic information to be captured by We the People Today™ and also serving as a conduit for soliciting voter support and contributions.
 - (3) **Modules.** We the People Today is divided into the following modules:
 - (A) **Voter File.** Provides **Voter Basic File** (contact and voting history information), **Voter Demographic File** that provides eight social-economic and political indicators, which drives an automatically generated **Voter Alignment Bar** that indicates whether the voter is a Solid, Strong or

- Moderately partisan voter.
- (B) **Election Whip.** Module is the Election Day GOTV module for the precinct committeeman which identifies the voter's PAT, and the necessary contact information should the voter fail to satisfy his PAT, which upon the voter's confirmation of his Re-PAT, resets the system for alert if the voter fails to satisfy his Re-PAT. The Trust Property also identifies the TLI and what Democratic or Republican votes are necessary for the precinct to produce for the GOP ticket to win.
- (C) **Party Toolbox.** Module is the accountability and planning tool for party officers, and includes mapping for annual GOTV planning, decennial reapportionment, and generates multiple accountability reports as to TLI, PCI and CI factors by precinct, municipality, county and state. Toolbox also provides ancillary online software services, such as enterprise publishing, polling, etc.
- (4) *Baseline.*
- (A) The state's HAVA is the baseline data for all individual voter files, by which all hygiene and appendage is by first, voter interaction and updating, protected by subsequent precinct committee person validation; and secondly by off-line commercial micro-targeting and public record census and tax record resources.
- (B) Election results is the baseline data for all district data which does not consist of compilations of the aforementioned individual voter files. Election results are essential to generate Voter Measurement Indexes, being the TLI, PCI and CI.
- (e) **Structure, Distinctions and Features.** — Unlike commercial software which is primarily intended for singular candidate campaigns:
- (1) We the People Today™ is designed for precinct Democratic or Republican committee people for interaction with their elected constituents and their respective county Democratic or Republican chairmen to monitor compliance with voter representative demands;
 - (2) We the People Today™ is continuous from one election cycle to the next; and
 - (3) We the People Today™ is designed to be intuitive, intended to be immediately understandable by the end user without the need for instructions.
- (4) The distinction between We the People Today™ and commercial products is that We the People Today™ develops, employs and relies upon its own, organic House List, while all others employ and rely upon stale public and commercial databases which are stale when created.
- (f) **Public Portals.** — LincolnCharitableTrust.org™ and MyVoterPage.com™ are to serve as the public portal providing access to We the People Today™ for collection of demographic and Election Whip data while providing beneficiaries full interactive communications.
- (1) LincolnCharitableTrust.org™ is to automatically default to MyVoterPage.com™ for all Voter Beneficiaries while enabling Qualified and Current Beneficiaries access to other components and modules on LincolnCharitableTrust.org™ website.
 - (2) Once registered, Voter Beneficiaries are to access their personal MyVoterPage.com™ page via username and password.
 - (3) Only the Trustee shall be authorized to notify the Voter via email that a digital post has been made in the Voter's personal MyVoterPage.com™ page, so as to not burden the voter with cluster.
- (g) **MyVoterPage.com.** — MyVoterPage.com™ is to serve as the primary public portal for all Voter Beneficiaries. The purpose of MyVoterPage.com™ is to serve as the voter's primary digital depository for all political notices and electronic communications controlled by the voter's individual preferences. MyVoterPage.com™ shall provide the following benefits and services:
- (1) Digital Sunshine Law notices of all public meetings, minutes of prior meetings and agendas for each of the Voter's political subdivisions.
 - (2) Digital notices and/or postings of bills, ordinances, rule-making notices of each Voter's expressed subject interests.
 - (3) Emails and other digital notices from each of the Voter's elected U.S. Senators, Member of Congress, state Senator, state representative, and all other state-wide and municipal public officials and elected party officials.
 - (4) Emails and other digital notices from each candidate for public and party office of the Voter's political subdivisions and from the Voter's preferred national, state, county or local party committee.
 - (5) Emails and other digital notices from each 501(c)(3), (c)(4), (c)(5) and 527 social

advocacy and political committees which the Voter voluntarily elects to receive.

- (6) Data bar providing bookmark link to each of the Voter's Congressional and legislative districts and political subdivisions and their elected precinct party committee people.
 - (7) Daily, weekly or other periodic notices exclusively from the Trustee as to updates or new postings in the Voter's page from elected public and party officials, so as to avoid email clutter.
- (h) Data Capturing.** — A visitor's first hit on *WethePeople.org*[™] or *MyVoterPage.com*[™] is to capture demographic and Whip data for automatic input into *We the People Today*[™] Voter Module, specifically each visitor shall be permitted full access to his own voter file and make any corrections or revisions within the Voter Basic File (name, address, phone number, email, etc.) and append information by selection of various points to build the Voter Demographic File in order to move the Voter Alignment Fire; and to also provide contact and PAT information for the Party Whip[™] File.
- (i) Individual Data.** — The Trust Property shall maintain the following data per each registered voter, including HAVA baseline data, indicated by a * plus appendage data by the voter and/or precinct committee person or District Trustee, as designated by a †, or from other public records which may or may not be accessible, as designated by a ‡
- (1) Name.*
 - (2) Street Address.*
 - (3) City.*
 - (4) State.*
 - (5) Zip Code (nine-digit).*
 - (6) Birth Date.*
 - (7) Gender.*
 - (8) Occupation.† or ‡
 - (9) Spouse's Name. † or ‡
 - (10) Name of Employer.† or ‡
 - (11) Employer Address.‡
 - (12) Employer City, State, Zip.‡
 - (13) VTD.*
 - (14) Voter ID Number.*
 - (15) Municipality.*
 - (16) County.*
 - (17) State House District.*
 - (18) State Senate District.*
 - (19) U.S. Congressional District.*
 - (20) School District.*
 - (21) Other Special Governmental District which the governing body is elected, i.e. New York State Fire Districts.*
 - (22) Registered Political Party.*

- (23) Voting History.*
- (24) PAT.†
 - (A) Before Work (before 9 AM).
 - (B) During Lunch (before 1 PM).
 - (C) After Work (before 6 PM).
 - (D) After Dinner (after 5 PM).
- (25) Transportation required to polls due to age or disability.†
- (26) Voting assistance required due to age or disability.†
 - (A) Handicap access.
 - (B) Voter assistance inside polls.
 - (C) Language translator.
- (27) Contact Preference:†
 - (A) Phone:
 - (i) Home.
 - (ii) Work.
 - (iii) Cell.
 - (iv) Do Not Call.
 - (B) Email
 - (i) Home.
 - (ii) Work
 - (iii) Do Not Contact.
 - (iv) No email, letter only.
 - (v) No email, personal contact only.
- (28) HHD status, to be generated by affixing spouse at same address.
- (29) *House/Home Indicator:*
 - (A) Owner or Renter.†
 - (B) Tax Value/ Zoning.‡
 - (C) Census Tract ID.*
- (30) *Religious Preference:*†
 - (A) Jewish.
 - (B) Catholic.
 - (i) Roman.
 - (ii) Eastern Orthodox.
 - (iii) Russian Orthodox.
 - (C) Protestant.
 - (i) Episcopal.
 - (ii) Lutheran.
 - (iii) Methodist.
 - (iv) Presbyterian
 - (D) Evangelical.
 - (E) Islamic.
 - (i) Sunni.
 - (ii) Shia.
 - (F) Other.
 - (i) Mormon.
 - (ii) Friends (Quaker).
 - (iii) Mennonite.
 - (iv) Amish.
- (31) *Ethnicity Indicator:*†
 - (A) European-American.
 - (i) Irish.
 - (ii) English
 - (iii) Welsh.

- (iv) German.
- (v) French.
- (vi) Italian.
- (vii) Swiss.
- (viii) Scandianian.
- (ix) Polish.
- (x) Eastern Slavic.
- (xi) Russian.
- (B) African-American.
- (C) Asian-American.
 - (i) Arabic.
 - (ii) Indian.
 - (iii) Chinese.
 - (iv) Japanese.
 - (v) Korean.
 - (vi) Vietnamese.
- (D) Hispanic-American.
 - (i) Cuban.
 - (ii) Mexican.
 - (iii) Haitian.
 - (iv) Dominican Republican.
 - (v) Other Carribean
 - (vi) Central America.
 - (vii) Brazilian.
 - (viii) Argentinean.
 - (ix) Chilean.
 - (x) Other South American.
- (E) Membership in Fraternal Society
- (F) ID by census tract.
- (32) *Educational Indicator:*
 - (A) High School.
 - (B) Attended College.
 - (C) Graduated College.
 - (i) BA
 - (ii) Masters.
 - (iii) Phd.
- (33) *Occupational/Educational Indicator:* †
 - (A) Member labor union.
 - (i) AFL-CIO generally.
 - (ii) Teamsters.
 - (iii) IBEW.
 - (iv) UMW.
 - (v) UTU, BLE, etc.
 - (vi) NEA and/or state affiliate.
 - (vii) AFT.
 - (viii) AFSME.
 - (B) Chamber of Commerce.
 - (C) Self-employed (license).‡
 - (D) Atty (Bar membership).‡
 - (E) CPA (license).‡
 - (F) Healthcare (license).‡
 - (G) Officeholder.‡
 - (H) Civil Service.
- (34) *Military/ Veteran Indicator:* †
 - (A) No Military Service.
 - (B) Veteran or Active Duty.
 - (i) Army.
 - (ii) Navy.
 - (iii) U.S. Marines.
 - (iv) Air Force.
 - (v) National Guard.
 - (vi) Coast Guard.
 - (vii) Air National Guard.
- (35) *Civic Indicator:* †
 - (A) Service Clubs (e.g. Lions)
 - (B) Scouts (Boys, Girls).
 - (C) Social welfare/ relief
 - (D) FFA/ Grange
 - (E) Fraternal Societies.
- (36) *Advocacy Indicator :* †
 - (A) Environmental.
 - (B) Social Justice.
 - (C) Gun control or NRA.
 - (D) Community/ Civic.
 - (E) Law/Court Improvement.
 - (F) LWVs.
 - (G) Pro-Life or Pro-Choice.
 - (H) Religious/Moral Majority.
- (37) *Public Safety Indicator:* †
 - (A) Police (FOP).‡
 - (B) Firefighter (IAFF or Vol).‡
 - (C) Sheriff or Constable.‡
 - (D) EMS (IAFF or Vol).‡
- (38) *Party Participation Indicator:* ‡
 - (A) Contributor.
 - (i) Federal.
 - (i) Amount?
 - (ii) Non-Federal.
 - (i) Amount?
 - (iii) PAC.
 - (i) Amount?
 - (B) Volunteer.
 - (i) Preference.
 - (i) GOTV.
 - (ii) Circulator.
 - (iii) Poll Wacher/Inspector.
 - (iv) Transportation.
 - (v) Other.
- (j) **District Data.** — The Trust Property shall maintain the following data per each district as described in the following subsection:
 - (1) Total Number of Registered Voters (“TRV”).
 - (2) Total Number of Adult Population.
 - (3) Percentage of Voters to Population.
 - (4) Total Number of registered Republican voters (“TRR”).
 - (5) Total Number of registered Democratic voters (“TRD”).
 - (6) Total Number of registered Independents/ No Party.
 - (7) Total Number of registered Minor Parties.
 - (8) Percentage of Republicans to TRV (00.00%).
 - (9) Percentage of Democrats to TRV (00.00%).

- (10) Percentage of Independents to TRV (00.00%).
- (11) Percentage of Minor Parties to TRV(00.00%).
- (12) Ratio of Republicans to Democrats (1:1).
- (13) Republican TLI (00.00%).
- (14) Democratic TLI (00.00%).
- (15) Republican PCI (00.00%).
- (16) Democratic PCI (00.00%).
- (17) Republican CI. .0000 to 1.0000.
- (18) Party Presence.
 - (A) Active Precinct Organization.
 - (i) Committeeman.
 - (i) Registered.
 - (ii) Committeewoman.
 - (i) Registered.
 - (ii) Broadband access.
 - (iii) Inspector of Elections.
 - (iv) GOP Whips.
 - (B) Semi-Active Precinct Organization.
 - (C) Committeeman.
 - (D) Committeewoman.
 - (E) Inactive Precinct Organization.
 - (F) None of the above.
- (19) Patchwork Nation Classification:
 - (A) Boom Towns.
 - (B) Campus & Career.
 - (C) Emptying Nest.
 - (D) Evangelical Epicenters.
 - (E) Immigration Nation.
 - (F) Industrial Metropolis.
 - (G) Military Bastions.
 - (H) Minority Central.
 - (I) Moneyed Burbs.
 - (J) Service Worker Centers.
 - (K) Tractor Country.
- (20) TLI Ranking.
 - (A) High mobilization.
 - (B) Medium mobilization.
 - (C) Low mobilization.
- (21) PCI Ranking.
 - (A) High straight ticket voting.
 - (B) Medium straight ticket voting.
 - (C) High ticket splitting.
- (22) CI Ranking.
 - (A) High Democratic domination.
 - (B) No party domination.
 - (C) High Republican domination.

(k) EULA. — The Trustee shall establish an End Users License Agreement (“EULA”) which in addition to the customary and generally accepted terms and conditions governing copyrights and indemnification among other considerations, shall contain such additional terms and conditions as may be required by the Trustee to assure the proprietary governance of the Trust Property, as follows:

End Use License Agreement

PLEASE READ THESE TERMS AND CONDITIONS OF USE

CAREFULLY. THESE TERMS AND CONDITIONS MAY HAVE CHANGED SINCE YOUR LAST VISIT TO THIS WEB SITE AND TO THE PRODUCTS. BY USING THIS WEB SITE OR THE PRODUCTS, YOU INDICATE YOUR ACCEPTANCE OF THESE TERMS AND CONDITIONS. IF YOU DO NOT ACCEPT THESE TERMS AND CONDITIONS, THEN DO NOT USE THIS WEB SITE OR THE PRODUCTS.

YOU AND EACH OF YOU ARE SOLELY RESPONSIBLE FOR ANY AND ALL COMPLIANCE WITH FEDERAL OR STATE CAMPAIGN FINANCE, ELECTION, REVENUE AND TAX LAWS AND ACCOMPANY RULES AND REGULATIONS WHICH ARE APPLICABLE AND GOVERN YOUR USAGE OF THESE PRODUCTS AND YOU AGREE THAT YOU AND EACH OF YOU INDEMNIFY AND HOLD HARMLESS THE TRUSTEE, THEIR AGENTS, EMPLOYEES AND COUNSEL FROM ANY AND ALL CLAIMS IN A COURT OF LAW OR ADMINISTRATIVE OR REGULATORY TRIBUNAL.

The following are the terms and conditions for access to this web site and use of the Products. By clicking the ‘I accept’ button on the sign-up page, by logging in to your We the People Today™ account or by accessing the We the People Today™ services via any API interface, you accept these terms and conditions.

1. Copyright and Trademark Information

Copyright © 2008-2018 The Trustee of the Lincoln Charitable Trust. All rights reserved.

This web site, and the information which it contains, is the property of beneficiaries held in trust by The Trustee of the Lincoln Charitable Trust and is protected from unauthorized copying and dissemination by United States copyright law, trademark law, international conventions and other intellectual property laws. By way of example only, and not as a limitation, My Voter Page, We the People Today and the We the People Today logo are trademarks of The Trustee of the Lincoln Charitable Trust under the applicable laws of the United States and/or other countries. Other product or service names or logos appearing in this Site are either trademarks or registered trademarks of The Trustee of the Lincoln Charitable Trust and/or its affiliates. The absence of a product or service name or logo from this list does not constitute a waiver of Trustee’s trademark or other intellectual property rights concerning that name or logo.

2. Representations and Acknowledgments

Subject in each case to the terms listed in the remainder of this Agreement, you hereby represent, acknowledge and agree that:

(A) The Products may only be used for lawful purpose for the official business of the Democratic or Republican Party or any Current Beneficiary to:

- (1) solicit the person to support the Democratic or Republican Party and all of its candidates; and/or
- (2) solicit the person to make a financial contribution to a regularly constituted committee of the Democratic or Republican Party or any or all of its candidates; and/or
- (3) to urge the person to appear at the polls on Primary or Election Day to lawfully cast his ballot or to inform the person as to his rights and privileges to cast an absentee or other form of ballot in accordance with applicable Federal and state law.

(B) At no time shall you use this Software or any related product provided by the Trustee for the Lincoln Charitable Trust to:

(1) Violate any Federal or state or local law, including, but not limited to the Civil Rights Act of 1957 Pub. L. No. 85-315, § 131, 71 Stat. 634, or the Civil Rights Act of 1964, Pub.L. 88-352, 78 Stat. 241, the Voting Rights Act of 1965, Pub. L. 89-110, 79 Stat. 437, the Federal Election Campaign Act of 1971, Pub.L. 92-225, 86 Stat. 3, or any other applicable Federal, state or local law.

(2) Act, or omit to act, conspire, condone or become an accomplice before or after the fact to intimidate or coerce any person to intimidate, threaten, coerce, or attempt to intimidate, threaten, or coerce any other person for the purpose of interfering with the right of such other person to vote or to vote as he may choose, or of causing such other person to vote for, or not to vote for, any candidate for the office of President, Vice President, presidential elector, Member of the Senate, or Member of the House of Representatives, Delegates or Commissioners from the Territories or possessions, Governor, Lt. Governor, Attorney General, or any other statewide office, member of the Senate of the State Legislature, member of the House of Representatives of the State Legislature, or any county or municipal or school district or special district or judicial or other public office, or any member of the National, State, County, Municipal or precinct committee of any Political Party, at any general, special, or primary election held solely or in part for the purpose of selecting or electing any such candidate

(C) You agree that any information provided to you as a result of any data or lists within the Products which are provided initially or otherwise by public authorities pursuant to HAVA, Help America Vote Act of 2002, Pub. L. No. 107-252, 116 Stat. 1666 (2002), 42 U.S.C. §§ 15301 to 15545, and state authority, shall be used only for the intended purposes and under no circumstances shall you and each of you use the data or lists within the Products for any commercial purposes, and that any additional restrictions or prohibitions imposed by the state(s) which provide the data or lists under HAVA are incorporated by reference and made part of this Agreement.

(D) The Products may not be used for the sending of unsolicited email (commonly called "spam"). You agree you will not access or otherwise use third party mailing lists or otherwise prepare or distribute unsolicited email, in connection with the Products.

(E) You agree to import, access or otherwise use only lists for which all listed parties have consented to receive correspondence from you ("Permission Based Lists") in connection with your use of the Products. Mere agreement of a person or entity to participate in a survey is not consent to receive correspondence from you. For respondents to your surveys, consent to receive other correspondence is evidenced by the respondent opting into the "Join My Mailing List" link in the course of responding to your survey. You hereby covenant that you shall not use any other lists in connection with your use of the Products.

(F) You acknowledge and agree that not all email messages sent through use of the Products will be received by their intended recipients.

(G) Every email message sent by you in connection with the Products must contain the "unsubscribe" link that allows the recipient to remove themselves from your mailing list.

(H) You will comply with the restrictions on content of email messages and activities using the Products as set forth or referenced in this Agreement.

(I) You acknowledge and agree that you are the sole or designated "sender" (as such term is defined in the CAN-SPAM

Act of 2003 and any rules adopted under such act) of any email message sent by you using the Products.

(J) You agree that the "from" line of any email message sent by you using the Products will accurately and in a non-deceptive manner identify your organization, your product or your service.

(K) You agree that the "subject" line of any email message sent by you using the Products will not contain any deceptive or misleading content regarding the overall subject matter of the email message.

(L) You agree to include in any email message sent by you using the Products your valid physical address, which may be a valid post office box meeting the registration requirements established by the United States Postal Service, along with all other information required by applicable Federal or state campaign finance reporting or election law.

(M) You agree that in any email message sent by you using the Products you will not include any incentives (e.g., coupons, discounts, awards) that encourage a recipient to forward the email message to another recipient.

(N) You will adopt and maintain the Privacy Policy, which may be modified by the Trustee from time to time.

(O) If you are accessing or using the Products through a third party service or web site ("Third Party Service"), you will abide by these Terms and Conditions of Use regardless of anything to the contrary in your agreement with such third party. You shall not use such Third Party Service to avoid the restrictions set forth in these Terms and Conditions of Use.

(P) You may not publish, display, disclose, rent, lease, modify, loan, distribute, or create derivative works based on the Software or any part thereof. You may not reverse engineer, decompile, translate, adapt, or disassemble the Software, nor shall you attempt to create the source code from the object code for the Software. You may not transmit the Software over any network or between any devices, although you may use the Software to make such transmissions of other materials. You may transfer the Software to other computers you own as long as you only use it on one computer at a time.

(Q) You may not at any time use the Software or any part thereof for any commercial or any other purpose other than for lawful purposes limited to influencing elections and political activity, which may include the express advocacy for the election or defeat of candidates for public or political office, provided that at no time do you impugn, implicate, infer, imply, or suggest that you are under any circumstances representing or acting on behalf of The Trustee of the Lincoln Charitable Trust in any form or manner or that the Trustee promote, attack, support or oppose any candidate for Federal, state, county or municipal public or political office.

(R) You agree that you and only you are solely and personally responsible for compliance with all applicable Federal, state or local tax, revenue, campaign finance or election laws which govern you or use of these Products and you indemnify and hold harmless the Trustee, their agents, employees and counsel from any and all claims in a court or law or administrative or regulatory tribunal. You agree, among other duties imposed or required of you by law if so required to do so, to:

(1) report your execution of this Agreement and its resulting recognition of assets by virtue of you being a cestui que trust (beneficiary) as a campaign contribution, in-kind or otherwise, as may be required by FECA, the Federal Election Campaign Act (FECA) of 1971, as amended, Pub.L. 92-225, 86 Stat. 3, 2

U.S.C. § 431 et seq. as amended by e.g., the Bipartisan Campaign Reform Act of 2002 (P.L. 107-155) or any applicable state election or campaign finance reporting law.

(2) reporting your execution of this Agreement and its resulting recognition of assets by virtue of you being a cestui que trust (beneficiary) as taxable income if such is required by the Internal Revenue Code of 1954, 26 U.S.C. § 101 et seq. Or any applicable state tax or revenue law.

(S) You may not at any time use the Software after the expiration of the term of office or fail to notify the Trustee of the expiration of the term of office of committee person, agent, officer, or employee of a regularly constituted committee of the Democratic or Republican Party and surrender the username and password thereto assigned to the same, or otherwise enter upon and obtain access to the Trust Property after expiration of the term of office of the respective person.

(T) You may not at any time authorize or permit any person not an elected (or appointed to succeed one who is elected) non-compensated committee person, agent, officer, employee or representative of a regularly constituted committee of the Democratic or Republican Party or any candidate for Democratic or Republican nomination or nominee of the Democratic or Republican Party thereof for public office to access and use the Software in any form or manner, nor will you provide your user name and password to any such person.

(U) You may not at any time use the Software in any form or manner which will interfere or obstruct the rights of any other Beneficiary, including any regularly constituted committee of the Democratic or Republican Party and its duly elected committee persons or any candidate for Democratic or Republican nomination or thereafter the nominee of the Democratic or Republican Party for any Federal, state, county or municipal office duly elected in a primary election or at convention, caucus or similar occurrence or any elected Federal, state, county or municipal officeholder retaining registration in and a member of caucus or conference of the Democratic or Republican Party.

(V) You may not be compensated for the use of the Software at any time or otherwise be salaried for the purposes of using the Software.

5. Email, Permission Practices, Image Hosting & Prohibited Content

(A) *Subscriber Opt Out.* Every email message sent in connection with the Products must contain an "unsubscribe" link that allows subscribers to remove themselves from your mailing list and a link to the then current Privacy Policy. Each such link must remain operational for a period of thirty (30) days after the date on which you send the message, and must be in form and substance satisfactory to the Trustee. You acknowledge and agree that you will not remove, disable or attempt to remove or disable either link. You shall monitor and process unsubscribe requests received by you directly within 10 days of submission, and update the email addresses to which messages are sent through your account. Under the CAN-SPAM Act of 2003, you acknowledge that you are responsible for maintaining and honoring the list of unsubscribe requests following termination of your account and this Agreement.

(B) *Permission Practices.* You agree to import, access or otherwise use only Permission Based Lists in connection with your use of the Products. You hereby covenant that you shall not use any other lists in connection with your use of the Products. If you have used the Product feature that allows you to request a recipient to confirm that you have his or her permission to send emails to him or her, and such recipient has not responded or

does not respond affirmatively to such request for confirmation, you agree that you shall not send emails to that recipient. Without limiting the foregoing, you agree that you shall not utilize the Product to send any commercial electronic mail message (as that term is defined in the CAN-SPAM Act of 2003) to any person who has opted out or otherwise objected to receiving such messages from you or another sender on whose behalf you may be acting. You cannot mail to distribution lists, newsgroups, or spam or unsolicited email addresses. You cannot copy a Product template or any other features or functionality from the Products and use them for any purpose other than sending email messages from the Products. Emails that you send through the Product may generate spam complaints from recipients. As a matter of privacy, the Trustee cannot share with you the email addresses of those who complain about your email campaign. You are responsible for ensuring that your email campaigns do not generate a number of spam complaints in excess of industry norms. The Trustee, in its sole discretion, shall determine whether your level of spam complaints is within industry norms, and its determination shall be final, binding and conclusive for all purposes under this Agreement. The Trustee will terminate your use of its Products if the Trustee determines that your level of spam complaints is higher than industry norms.

(C) *Footers.* For every email message sent in connection with the Products, you acknowledge and agree that the Trustee may add an identifying footer stating "Provided by WethePeopleToday.com™ or Powered by We the People Today™" or a similar message.

(D) *Use of Images Hosted by the Trustee.* Images hosted by the Trustee on the Trustee' controlled servers may only be used in connection with the Products and for no other purpose whatsoever.

(E) *Prohibited Content.* The Trustee prohibits the use of the Products or web site by any person or entity that:

(1) Provides, sells or offers to sell any of the following products or content (or services related to the same): pornography or illicitly pornographic sexual products, including but not limited to magazines, video and software; escort services; illegal goods; illegal drugs; illegal drug contraband; pirated computer programs; instructions on how to assemble or otherwise make bombs, grenades or other weapons.

(2) Displays or markets material that exploits children, or otherwise exploits children under 18 years of age.

(3) Provides, sells or offers products, services or content frequently associated with unsolicited commercial email, a.k.a. spam, such as online and direct pharmaceutical sales, including but not limited to health and sexual well-being products, work at home businesses, credit or finance management, including but not limited to credit repair and debt relief offerings and stock and trading tips, and mortgage finance offers, DJ/nightclub, event/club promotions/party lists, and odds making and betting/gambling services, including but not limited to poker, casino games, horse and dog racing and college and pro sporting events.

(4) Provides material that is grossly offensive, including blatant expressions of bigotry, prejudice, racism, hatred or excessive profanity or post any obscene, lewd, lascivious, filthy, excessively violent, harassing or otherwise objectionable content.

(5) Posts or discloses any personally identifying information or private information about children without their consent (or their parents' consent in the case of a minor).

(6) Sells or promotes any products or services that are unlawful in the location at which the content is posted or received.

(7) Introduces viruses, worms, harmful code and/or Trojan

horses on the Internet.

(8) Promotes, solicits or participates in pyramid schemes or multi-level channel and/or network marketing (MLM) businesses, including but not limited to personal work-at-home offers promoting "get rich quick," "build your wealth" and "financial independence" offerings.

(9) Engages in any libelous, defamatory, scandalous, threatening, harassing activity.

(10) Posts any content that advocates, promotes or otherwise encourages violence against any governments, organizations, groups or individuals or which provides instruction, information or assistance in causing or carrying out such violence.

(11) Provides content, including images, of authors, artists, photographers or others without the express written consent of the content owner.

(12) Solicits campaign contributions that are illegal or otherwise violate any applicable Federal or state campaign finance laws.

(13) Represents that the Trustee promote, attack, support or oppose any candidate for Federal, state, county or municipal public office or for political party office in any primary, municipal or general election, or in any caucus or convention or otherwise purports that the Trustee is engaged in any Federal or state electioneering activity to influence any election other than the providing of the Products for the First Amendment exercise of participants thereto.

(14) Engages in any activity that abridges, denies, deprives, or violates any constitutional right or any procedural or substantive due process right actionable under the Civil Rights Act of 1871, 42 U.S.C. § 1983, the Civil Rights Act of 1957, 42 U.S.C. § 1971(b), or Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U.S.C. §§ 1961-1968 or any state equivalent.

(F) *Right to Disable Access.* The Trustee, at his discretion, may immediately disable your access to the Products without refund if the Trustee believes in his sole discretion you have violated any of the policies listed above or elsewhere in this Agreement.

6. Restrictions and Responsibilities

(A) *No Rights in Software.* This is an Agreement for services and access to this web site, and you are not granted a license to any software by this Agreement. You will not, directly or indirectly, reverse engineer, decompile, disassemble, or otherwise attempt to discover the source code, object code, or underlying structure, ideas, or algorithms of, or found at or through the Products or any software, documentation, or data related to the Products ("Software"); remove any proprietary notices or labels from the Products or any Software, modify, translate, or create derivative works based on the Products or any Software; or copy, distribute, pledge, assign, or otherwise transfer or encumber rights to the Products or any Software. Violation of these restrictions may result in the termination of this Agreement.

(B) *Permitted Use of the Products.* The Products shall be used for your discharge of your powers and duties as an elected, non-compensated officeholder of the Democratic or Republican Party or as an officer or director of a nonprofit Allied Democratic or Republican Party Interest purposes only, and you shall not use the Products or any Software for timesharing or service-bureau purposes or otherwise for the benefit of a third party. If you are using the Products in any jurisdiction which restricts the ability of a software provider to restrict your right to reverse engineer, decompile, disassemble, or otherwise attempt to discover the source code, object code, or underlying structure, ideas, or algorithms of the Software or Products, then you hereby covenant that, prior to engaging in such activities, you will first request that the Trustee perform such work at its standard professional services rates. The Trustee can then decide either:

(i) to perform the work in order to achieve such interoperability and charge its then standard rates for such work to you; or (ii) to permit you to reverse engineer parts of the Software in order to obtain such source code, but only to the extent necessary to achieve such interoperability or (iii) provide you with the information that you need regarding the Software for the purpose for which applicable law permits you to engage in such activities despite a contractual prohibition on such activities.

(C) *Compliance with Laws; Monitoring.* You shall use the Products only in compliance with this Agreement, the federal CAN-SPAM Act of 2003 and regulations thereunder, the Federal Election Campaign Act of 1972 and regulations thereunder, the governing campaign finance and/or election code or statutes of your respective state and all other applicable U.S., state, local and international laws (including but not limited to policies and laws related to spamming, privacy, obscenity, or defamation, copyright and trademark infringement and child protective email address registry laws). Although the Trustee has no obligation to monitor the content provided by you or your use of the Products, the Trustee may do so and may block any email messages, remove any such content or prohibit any use of the Products that the Trustee believes may be (or is alleged to be) in violation of the foregoing. Among such compliance matters you agree that at no time will you

(1) Use the Products or any part thereof to abridge, deny, deprive, impair, infringe, or violate any U.S. or state constitutional right of any U.S. citizen to cast a ballot or to otherwise express his opinion or associate with any political party or association or otherwise petition for redress of grievance to any public official of any branch of the U.S., state, or local government.

(2) Use the Products or any part thereof to libel or slander any person or persons in any form or manner or to impugn, implicate, infer, imply, or suggest that you are under any circumstances representing or acting on behalf of the Trustee in any form or manner relative any communication, either electronically, in broadcast or print media, or verbally.

(3) Use the Products or any part thereof to violate any provision of any United States or state election code, or any campaign finance law that governs *inter alia*, campaign contributions and expenditures.

(4) Use the Products or any part thereof to solicit any campaign contributions from any person who is not permitted by either United States or state election or campaign finance laws from making a campaign contribution, i.e., a corporation not organized for political activity purposes, a national bank, a collective bargaining agent, such as a labor union, or a citizen not of the United States, when campaign contributions from such persons is prohibited expressly or otherwise by any United States or state election or campaign finance law.

(5) Provide the Products or any part thereof to any other beneficiary who by operation of governing campaign finance law is precluded from access to the Products because the basis or value of the Software exceeds the campaign contribution limits imposed by the applicable campaign finance law.

(6) Use the Products or any part thereof to violate any crime or penal statute of the United States or of any state or to commit any act which gives rises to a cause of action for a claim sounding in tort in any court of law or equity.

(7) Use the Products or any part thereof to obtain or use any information obtained from the Products relative to any registered elector, resident or other person, including any name, address, phone number, email address, name of employer, occupation or any other information within the Products for any other purpose whatsoever other than which is permitted by the Trustee under this Agreement.

(8) Use the Products or any part thereof to knowingly enter or verify any information of whatever form or manner which is false or misleading or which there is a reasonable suspicion

that such information may be false or misleading.

(D) *Indemnification.* You hereby agree to defend, indemnify and hold harmless the Trustee and ancillary trustees, agents, third-party suppliers and providers, licensors, etc. against any damages, losses, liabilities, settlements, and expenses (including without limitation costs and reasonable attorneys' fees) in connection with any claim or action that (i) arises from any alleged breach of this Agreement, (ii) arises from the content or effects of any messages you distribute using the Products or (iii) otherwise arises from or relates to your use of the Products. In addition, you acknowledge and agree that the Trustee has the right to seek damages when you use the Products for unlawful purposes, in an unlawful manner, and/or in a manner inconsistent with the terms of this Agreement, and that such damages may include, without limitation, direct, indirect, special, incidental, cover, reliance and/or consequential damages.

(E) *Your Information.* In using the varied features of the Products, you may provide information about yourself or your employer (such as name, contact information, or other registration information) to the Trustee. The Trustee may use this information and any technical information about your use of the Products to tailor its presentations to you, facilitate your movement through the Product, or communicate separately with you. If you accessed the Products as a result of solicitation by a marketing partner of the Trustee, the Trustee may share your information with the marketing partner and the marketing partner may share related information with the Trustee. The Trustee will not provide your contact information to companies you have not authorized for that purpose unless required by law or unless you are terminated by the Trustee due to unsolicited commercial email being sent from your account.

(E) *Intellectual Property Rights in Your Content.* You agree that you will not upload or transmit any contact lists, communications or content of any type to this web site or in connection with the Products that infringe, misappropriate or violate any rights of any party. By submitting ideas, concepts, inventions, or content to this web site or using them in connection with the Products, you agree that such submission is non-confidential for all purposes. If you make any such submission, you agree that you will not send or transmit to The Trustee or to any third party using the Products, any communication or content that infringes or violates any rights of any party. If you submit any business information, ideas, concepts or inventions or content to The Trustee by email, you agree such submission is non-confidential for all purposes. If you make any submission to this web site or if you submit any business information, idea, concept or invention to The Trustee by email, you automatically grant—or warrant that the owner of such content or intellectual property has expressly granted—the Trustee a non-exclusive, royalty-free, perpetual, irrevocable, worldwide license to use, reproduce, create derivative works from, modify, publish, edit, translate, distribute, perform, and display such content in any manner.

(F) *Use of Links in the Opinion Survey Product.* In connection with the Opinion Survey Product, you hereby agree that you shall only distribute links to the survey via the Opinion Survey Product, or as a link on your web site.

6. Confidentiality

You acknowledge that the Products contain proprietary trade secrets of the Trustee and you hereby agree to maintain the confidentiality of the Products using at least as great a degree of care as you use to maintain the confidentiality of your own most confidential information. You agree to reasonably communicate the terms and conditions of this Agreement to those persons

accountable or answerable to you who come into contact with the Products, and to use reasonable best efforts to ensure their compliance with such terms and conditions, including, without limitation, not knowingly permitting such persons to use any portion of the Products for the purpose of deriving the source code of the Products or defeating the Key.

7. Limited Warranty

THE TRUSTEE OF THE Lincoln Charitable Trust WARRANTS FOR A PERIOD OF THIRTY (30) DAYS AFTER LICENSING OF THE SOFTWARE THAT THE SOFTWARE WILL OPERATE SUBSTANTIALLY IN ACCORDANCE WITH THE DOCUMENTATION. SHOULD THE SOFTWARE NOT SO OPERATE, YOUR EXCLUSIVE REMEDY, AND THE SOLE OBLIGATION OF THE TRUSTEE OF THE Lincoln Charitable Trust UNDER THIS WARRANTY, SHALL BE, AT THE SOLE DISCRETION OF THE TRUSTEE OF THE Lincoln Charitable Trust, CORRECTION OF THE DEFECT OR REFUND OF THE LICENSING FEE PAID FOR THE SOFTWARE. ANY USE BY YOU OF THE SOFTWARE IS AT YOUR OWN RISK. THIS LIMITED WARRANTY IS THE ONLY WARRANTY PROVIDED BY THE TRUSTEE OF THE Lincoln Charitable Trust REGARDING THE SOFTWARE. EXCEPT FOR THE LIMITED WARRANTY ABOVE, THE SOFTWARE IS PROVIDED "AS IS." TO THE MAXIMUM EXTENT PERMITTED BY LAW, THE TRUSTEE OF THE Lincoln Charitable Trust DISCLAIMS ALL OTHER WARRANTIES OF ANY KIND, EITHER EXPRESSED OR IMPLIED, INCLUDING, WITHOUT LIMITATION, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. THE TRUSTEE OF THE Lincoln Charitable Trust DOES NOT WARRANT THAT THE FUNCTIONS CONTAINED IN THE SOFTWARE WILL MEET ANY REQUIREMENTS OR NEEDS YOU MAY HAVE, OR THAT THE SOFTWARE WILL OPERATE ERROR FREE, OR IN AN UNINTERRUPTED FASHION, OR THAT ANY DEFECTS OR ERRORS IN THE SOFTWARE WILL BE CORRECTED, OR THAT THE SOFTWARE IS COMPATIBLE WITH ANY PARTICULAR PLATFORM. SOME JURISDICTIONS DO NOT ALLOW THE WAIVER OR EXCLUSION OF IMPLIED WARRANTIES SO THEY MAY NOT APPLY TO YOU.

8. Limitation of Liability

IN NO EVENT WILL THE TRUSTEE OF THE Lincoln Charitable Trust BE LIABLE TO YOU OR ANY THIRD PARTY FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, INDIRECT, SPECIAL, PUNITIVE, OR EXEMPLARY DAMAGES FOR LOSS OF BUSINESS, LOSS OF PROFITS, BUSINESS INTERRUPTION, OR LOSS OF BUSINESS INFORMATION) ARISING OUT OF THE USE OF OR INABILITY TO USE THE PROGRAM, OR FOR ANY CLAIM BY ANY OTHER PARTY, EVEN IF THE TRUSTEES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE AGGREGATE LIABILITY OF THE TRUSTEES WITH RESPECT TO ITS OBLIGATIONS UNDER THIS AGREEMENT OR OTHERWISE WITH RESPECT TO THE PRODUCT AND DOCUMENTATION OR OTHERWISE SHALL NOT EXCEED THE AMOUNT OF THE LICENSE FEE PAID BY YOU FOR THE SOFTWARE AND DOCUMENTATION. BECAUSE SOME STATES/COUNTRIES DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, THE ABOVE LIMITATION MAY NOT APPLY TO YOU.

9. Termination

(A) You may terminate this Agreement at any time by notifying

the Trustee by email. There are no refunds for any fees paid. YOU ARE RESPONSIBLE FOR TERMINATING YOUR ACCOUNT AND THIS AGREEMENT AND THE TRUSTEE IS NOT RESPONSIBLE FOR YOUR FAILURE TO PROPERLY TERMINATE YOUR ACCOUNT AND THIS AGREEMENT AND ANY CREDIT CARD CHARGES AND FEES YOU INCUR AS A RESULT OF YOUR FAILURE TO PROPERLY TERMINATE YOUR ACCOUNT AND THIS AGREEMENT.

(B) The Trustee may terminate this Agreement or the Products, disable your account or put your account on inactive status, in each case at any time with or without cause, and with or without notice. The Trustee shall have no liability to you or any third party because of such termination or action.

(C) The Trustee will terminate this Agreement or the Products, disable your account or put your account on inactive status, if and whenever the Trustee is advised by a Superior Beneficiary that you no longer hold elected office to which qualifies you as a Beneficiary with accessibility to the Product.

(D) The Trustee may delete any of your archived data within 30 days after the date of termination. After termination, you shall process all unsubscribe requests within 30 days of your last email campaign. The Trustee will provide upon request the list of unsubscribe requests from your account. Under the CAN-SPAM Act of 2003, you acknowledge that you are responsible for maintaining and honoring the list of unsubscribe requests following termination of your account and this Agreement. All sections of this Agreement that by their nature should survive termination will survive termination, including, without limitation, ownership, warranty disclaimers and limitations of liability.

(E) If your account is classified (at the Trustee's sole discretion) as inactive for over 120 days, The Trustee has the right to permanently delete your subscriber data. The Trustee will use good faith efforts to contact you via email prior to taking any permanent removal actions.

10. Restricted Persons; Export of Products or Technical Data

You hereby warrant that you are not a Restricted Person. For purposes of this Agreement, you are a Restricted Person if you or any officer, director, or controlling shareholder of the entity on behalf of which you are using the Products is (1) a national of or an entity existing under the laws of Cuba, Iran, Sudan, Syria, or any other country with which U.S. persons are prohibited from engaging in transactions, as may be determined from time to time by the U.S. Treasury Department; (2) designated as a Specially Designated National or institution of primary money laundering concern by the U.S. Treasury Department; (3) listed on the Denied Persons List or Entity List by the U.S. Commerce Department; (4) engaged in nuclear, missile, chemical or biological weapons activities to which U.S. persons may not contribute without a U.S. Government license; or (5) owned, controlled, or acting on behalf of a Restricted Person. If you become a Restricted Person during the term of this Agreement, you shall notify the Trustee within twenty-four (24) hours, and the Trustee shall have the right to terminate any further obligations to you, effective immediately and with no further liability to you, but without prejudice to your outstanding obligations to the Trustee.

You agree that you shall not utilize the Products to conduct or facilitate any transaction with any Restricted Person, except as may be expressly authorized in advance in writing by the U.S. Government. You may not remove or export from the United States or allow the export or re-export of the Products, or any direct product thereof, including technical data, in violation of

any restrictions, laws, or regulations of the United States or any other applicable country.

11. Links to Third-Party Web Sites

This web site may contain links to non-Trust web sites. These links are provided to you as a convenience, and the Trustee is not responsible for the content of any linked web site. Any non-Trust web site accessed from this web site is independent from the Trustee, and the Trustee has no control over the content of that web site. In addition, a link to any non-Trust web site does not imply that the Trustee endorse or accept any responsibility for the content or use of such web site.

12. No Implied Endorsements

In no event shall any reference to any third party or third party product or service be construed as an approval or endorsement by the Trustee of that third party or of any product or service provided by a third party.

13. Notice and Take Down Procedures; Copyright Agent

If you believe any materials accessible on or from this web site or the Products infringe your copyright, you may request removal of those materials (or access thereto) from this web site by contacting the Co-Trustee & Systems Administrator or the copyright agent (identified below) and providing the following information:

(A) Identification of the copyrighted work that you believe to be infringed. Please describe the work, and where possible include a copy or the location (e.g., URL) of an authorized version of the work.

(B) Identification of the material that you believe to be infringing and its location. Please describe the material, and provide us with its URL or any other pertinent information that will allow us to locate the material.

(C) Your name, address, telephone number and (if available) email address.

(D) A statement that you have a good faith belief that the complained of use of the materials is not authorized by the copyright owner, its agent, or the law.

(E) A statement that the information that you have supplied is accurate, and indicating that "under penalty of perjury," you are the copyright owner or are authorized to act on the copyright owner's behalf.

(F) A signature or the electronic equivalent from the copyright holder or authorized representative.

In an effort to protect the rights of copyright owners, the Trustee maintain a policy for the termination, in appropriate circumstances, of subscribers and account holders of this web site who are repeat infringers.

14. Username and Password

You are responsible for maintaining the security of your account, passwords, and files. The Trustee will accept the instructions of any individual who claims to be authorized to direct changes to your account so long as such person presents your username and password on-line, by email or by phone, or through a Third Party Service, if any, through which you access the Products. The Trustee have no knowledge of your organizational structure, if you are registering for the Products as an entity, or your personal relationships, if you are a person. The Trustee shall not be responsible for the actions of any individuals who misuse or misappropriate your contact lists or other assets using your username and password.

15. Miscellaneous

(A) *Severability*. If any provision of the Agreement is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect and

enforceable.

(B) *Agreement*. The Trustee and you agree that this Agreement is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements, communications, and other understandings relating to the subject matter of this Agreement, and that all waivers and modifications must be in a writing signed by both parties, except as otherwise provided herein. No delay or omission by either party in exercising any right or remedy under this Agreement or existing at law or equity shall be considered a waiver of such right or remedy.

(C) *Relationship*. No agency, partnership, joint venture, or employment is created as a result of the Agreement, and you do not have any authority of any kind to bind the Trustee in any respect whatsoever.

(D) *Counsel Fees*. In any action or proceeding to enforce rights under the Agreement, the prevailing party will be entitled to recover its costs and attorneys' fees.

(E) *Governing Law*. The Agreement shall be governed by the laws of the Commonwealth of Pennsylvania, USA without regard to its choice or law or conflict of laws provisions. All legal actions in connection with the Agreement shall be brought in the state or federal courts located in Philadelphia, Pennsylvania.

(F) *Definitions*. The following terms shall have the following meaning:

(1) "Product(s)" and or "Website(s)" shall mean the Trust Property, We the People Today™ ("We the People Today") and the public portal, LincolnCharitableTrust.org™ and may also mean (a) all of the contents of the files, disk(s), CD-ROM(s) or other media with which this Agreement is provided, including but not limited to (i) computer information or software owned and provided by the Trustee or third party computer information or software; (ii) digital images, stock photographs, clip art, sounds or other artistic works ("Stock Files"); (iii) related explanatory written materials or files ("Documentation"); and (iv) fonts; and (b) upgrades, modified versions, updates, additions, and copies of We the People Today™ Political Suite™ held in trust for you by the Trustee (collectively "Updates").

(2) "Use," "Used" or "Using" means to online access, install, download, copy or otherwise benefit from using the functionality of the Product or Software in accordance with the Documentation.

(3) "Trustee" means the Trustee of the Lincoln Charitable Trust, a Pennsylvania non-exempt charitable trust, Philadelphia, Pennsylvania 19013.

(G) *Additional Information*. If you have any questions about the rights and restrictions above, please contact the Trustee by email at info@LincolnCharitableTrust.org

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(I) Voter Validation. — All voter files from VTBs shall be validated by individual voters who shall be granted access to the Trust Property solely for purposes of inspecting their own voter file upon payment of a minimal service fee of \$2.50 or in the alternative, input their voter identification number, solely to constitute an initial firewall to prevent computer hacking or identity theft. At such time, the

voter shall be required to create a password and PIN for future access. The only information which the voter is inspecting is public information, hence there is no opportunity greater or lesser than normal for identity theft. Once the voter inputs any original information to update his voter file, i.e., contact information, the Trust Property shall suspend such information and not append the voter file until the precinct committeeman or committee woman, or another authorized representative of the Qualified Beneficiary verifies the voter inputted the updated information by personal visit, telephone call or email

Explanatory Comment

I, Definition of a Trust, Fiduciary Relationship.

A trust is a legal instrument created by a natural or artificial person ("settlor") to transfer property ("trust property") to another person ("trustee") to hold in trust for the benefit of another person(s) ("cestui qui trustee" or "beneficiary"). *Buchanan v. Brentwood Federal Savings & Loan Association*, 457 Pa. 135, 320 A.2d 117 (1974).

A trust is not an independent entity, *Roberts v Lomanto*, 112 Cal.App.4th 1553, 5 Cal.Rptr.3d 866 (3d Dist. 2003); but "fiduciary relationship with respect to property, subjecting the person by whom the title to the property is held to equitable duties to deal with the property for the benefit another person, which arises out of the result of a manifestation of an intention to create it." *In re Trust of Hirt*, 823 A.2d 438, 447-448 (Pa.Super. 2003); Scott, *Scott on Trusts* (5th ed. 2005); Restatement Third, *Trusts*, § 2 (2003).

II. Nature of Trust Property.

As stated by Restatement Third, *Trusts*, § 40(b), "The basic rule: any property may be trust property [as subject] to requirements of lawful purpose and administration, no policy of the trust law restricts the types of property interests a trustee may hold in that fiduciary capacity. Property denotes interest in things, not necessarily the things themselves, but necessarily things that are legally capable of being owned (and, ordinarily, transferred) and to which property interests can attach. . . . Trust property may be real or personal, tangible or intangible. It may consist of such diverse rights as undivided interests, terms of years, contingent future interests, and choses in action, even choses with respect to things that are specifically ascertainable at the time the trust is created, or with respect to things that are not owned at the time the trust is created, or with respect to things that are not owned by the settlor or in existence. Thus, a trademark, patent, or copyright, even an unpatented invention or uncopyrighted literary production, can be held in trust * * *." And see also *In re Lewis' Estate*, 407 Pa. 518, 180 A.2d 919 (1962).

III. The Specific Cause/Doctrine.

The Trust was established to offset and to mitigate the generally accepted opinion of political scientists concerning modern day political cultures, see e.g. Jo Freeman, *The Political Culture of the Democratic and Republican Parties*, *POLITICAL SCIENCE QUARTERLY*, Vol. 101, No. 3 (Fall 1986); and distinguishable regional political cultures found among the states (moralist, individualist, and traditionalist), see e.g. Daniel J. Elazar *American Federalism: A View from the States*, New York: Thomas Y. Crowell (2d ed. 1972).

IV. Protecting First Amendment Right of Association.

It is not disputed the First Amendment's promoting uninhibited, robust, and wide open public debate, *New York Times Co. v. Sullivan*, 376 U.S. 254, 270 (1964), is uniquely served by

political parties, *Democratic Party v. Wisconsin ex rel. La Follette*, 450 U.S. 107, 122 (1981), attempting to control government through electing candidates sharing common beliefs. *Eu v. San Francisco Co. Democratic Central Comm.*, 489 U.S. 214, 224-225 (1989).

Parenthetically, national political parties were originally federations of state committees concerned only about presidential nominees. Daniel H. Lowenstein & Richard L. Hason, *Election Law* (2d ed.) 429, New York: Carolina Academic Press (2001). Parties were born out of necessity to organize public opinion, *Ray v. Blair*, 343 U.S. 214, 220-221 (1952), but as an anomaly engrafted onto a constitutional system that did not plan for them. John H. Alrich, *Why Parties? The Origin and Transformation of Party Politics in America* Chicago: Chicago Univ. Press (1995). Political parties are unique in although they are extragovernmental entities, appearing as private associations but controlling public affairs. See generally, Daniel H. Lowenstein, *Associational Rights of Major Political Parties*, 71 TEXAS L.REV. 1741 (1993). One commentator analogies parties to public utilities. Leon Epstein, *Political Parties in the American Mold* 9-39, Madison: University of Wisconsin Press (1986).

Voters' right of association with those who share political views, *Rutan v. Republican Party of Illinois*, 497 U.S. 62, 69 (1990), specifically extends to a political party. *Kusper v. Pontikes*, 414 U.S. 51, 56 (1973). However, it is also fully agreed that such First Amendment rights attach not only to the communication, but also the right to receive the communication. *Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council*, 425 U.S. 748 (1976). Exercising First Amendment rights is no license to deny others the same. *Associated Press v. United States*, 326 U.S. 1, 7, 20 (1945). Diminishment of First Amendment rights constitutes irreparable injury. *Elrod v. Burns*, 427 U.S. 347, 373 (1976).

Promoting strategic association is essential to the integrity of the political process by mitigating the public's perception of political corruption through their increased opportunity to participate. *McConnell v. FEC*, 540 U.S. 93 (2003); *Shrink Missouri v. Nixon*, 528 U.S. 377 (2000); *FEC v. National Right to Work Comm.*, 459 U.S. 192, 208 (1982). Such is vital to the political process. *Colorado Republican Federal Campaign Comm. v. FEC*, 518 U.S. 604, 622- 623 (1996). A strong and stable two-party system contributes to sound and effective government. *Timmons v. Twin Cities Area New Party*, 520 U.S. 351, 367 (1997). Finally, no one disputes that political parties have the First Amendment right to organize a party in the way that will make it the most effective political organization. *Ripon Society, Inc. v. National Republican Party*, 173 U.S.App.D.C. 350, 525 F.2d 567, 586-587 (1975) (en banc) *cert. denied*, 424 U. S. 933 (1976). As a Federal court restated as black letter law:

The First Amendment protect's a person right to associate with those who share his political views. *Rutan v. Republican Party of Illinois*, 497 U.S. 62, 69, 110 S.Ct. 2729, 2734, 111 L.Ed.2d 52, 53 (1990); *Kusper v. Pontikes*, 414 U.S. 51, 56, 94 S.Ct. 303, 307, 38 L.Ed.2d 260 266 (1973), and this right specifically extends to the "right to associate with the political party of one's choice." *Id.* at 56, 94 S.Ct. at 307. Further, the amendment protects [elected officials] as well as private citizens. *Bond v. Floyd*, 385 U.S. 116, 87 S.Ct. 339, 17 L.Ed.2d 235 (1966) (First Amendment right of free speech extends to state legislator)." *Barley v. Luzerne County Board of Elections*, 937 F.Supp. 362, 366 (M.D.Pa. 1995). As noted by 16B C.J.S. § 618, pp. 292, citing *Coates v. City of Cincinnati, Ohio*, 402 U.S. 611, 92 S.Ct. 1686, 29 L.Ed.2d 214 (1971) ("In any event, mere public intolerance or animosity cannot be the basis for the abridgement of the constitutional right of freedom of association and it cannot be

abridged merely because its exercise may be annoying to some persons").

V. Preventing Usurpation of Party Officeholders.

In addition to these First Amendment principles also lies the duty of party officials to be accountable to their registered party voters. This rule arises out of the fact that elected political party committee people are representatives of the voters who elected them. *Bentman v. Seventh Ward Democratic Exec. Committee*, 421 Pa. 188, 203, 218 A.2d 261, 269 (1966). As the Pennsylvania Supreme Court noted:

Today, however, the relationship between political parties, the government and the public has become such that, in many areas, the public interest is not only Directly affected by political parties but such parties actually perform Public functions imposed upon them by law. Insofar as a political party performs statutorily-imposed public functions and to the extent that its actions constitute state action, the internal organization of such political party is a matter of such concern to the public as to make it subject to constitutional limitations and judicial restraint. When the internal organization of a political party directly affects its performance of such public function then not only May the judiciary intervene but it Must intervene. [This is because in] our Commonwealth, the legislature has seen fit to impose upon political party organizations the performance of certain public functions which directly affect the public and our government. Such fact, considered in connection with the extension in recent years of the concept of 'state action' under the 14th Amendment, has brought about a change of judicial thinking in this area of the law. Judicial interference, even with the internal organization of a political party, is justifiable if such internal organization may directly affect the performance of a public function and the public interest. *Id.* at 196-197, 218 A.2d at 266.

Whoever voters elect are presumed not to be surplusage, as such is the primary means for voters to exert their will. *Derringe v. Donovan*, 308 Pa. 469, 473-477, 162 A. 439, 441 (1932). As such, party committee people are embodied with a duty of representation. *Application of Roosevelt*, 9 Misc.2d 205, 208, 106 N.Y.S.2d 747, 749-750 (N.Y.Sp. Term. 1957) *affirmed* 3 A.D.2d 988, 163 N.Y.S.2d 403 (1st Dept. 1957) *affirmed* 4 N.Y.2d 19, 171 N.Y.S.2d 841, 148 N.E.2d 895 (1958) ("(t)he county committee (of the Republican Party) and its chairman are ... trustees of party interests for the registered voters of the party in that county"); accord, *Bontempo v. Carey*, 64 N.J.Super. 51, 57, 165 A.2d 222, 225 (Law. Div. 1960). Accordingly, political parties have no existence of their own, as they are manifestations of their members who choose to associate. *Campbell v. Bysiewicz*, 242 F.Supp.2d 164, 175 (D.Conn. 2003). Additionally, political parties are not merely voluntary associations, but are an agency of the state. *Smith v. Allwright*, 321 U.S. 649, 663 (1944). Accordingly, a political party is more amiable to judicial intervention. *Bentman, supra*.

Accordingly, the Trust Property seeks to protect not only the First Amendment rights of all Democratic or Republicans to participate generally, but also by enabling the 365,858 precinct committee people to assist voters the "meaningful opportunity" to participate in the affairs of their chosen political party. While no one disputes that the purpose of a political party is to win elections, *Madole v. Barnes*, 20 N.Y.2d 169, 282 N.Y.S.2d 225, 229 N.E.2d 20 (1967), the right to participate in any political party is a constitutional right guaranteed by the First Amendment's Freedom of Association clause.

VI. Trust Property Facilitating CIIM.

We the People Today™ promotes strategic association among all political party workers through interactive social networking

technology that “Connects, Informs, Involves and Mobilizes” (CIIM). In plain English, people are more responsive when they feel they're involved. Julie Barko Germany, *Person-to-Person-to-Person: Harnessing the Political Power of Online Social Networks and User-Generated Content*, GEO. WASHINGTON UNV. IPDI (2007). Strategic association is a term of art defined as the right of meaningful opportunity to participate in the political process. See e.g., J. Thomas Wren, *Inventing Leadership, the Challenge of Democracy* 359, University of Richmond (2007).

History attributes the political party organization to Abraham Lincoln (*Illinois State Register*, 1840). Roy P. Basler, ed., *Collected Works of Abraham Lincoln*, Vol. I. 201-203 (1953) Lincoln's grassroots campaign paradigm proved successful for over 150 years. But, in the 1960s, politics shifted to a capital intensive broadcast campaign paradigm. As a result, the percentage of people involved in, i.e., the GOP plummeted 42% (Putnam, 2000). The Internet reverses the trend from concentrated control to participatory politics Kirsten Foot & Steven Schneider, *Web Campaigning*, New York: MIT Press (2006) which to date only one of the major parties have mastered. (All and Turk, 2007).

Any political campaign involves deliberate series of communication exercises to motivate a constituency from a stages of inaction to interest, then concern (awareness), to engagement (motivation), known as CIIM for Connect, Inform, Involve and Mobilize the voter, conventionally known as the Lincoln Rule. To successfully advance through these stages: political parties must build coalitions of multiple constituencies to collectively achieve a common electoral objective. Foot & Schneider, *supra*. This is accomplished by consensus building leadership, not top-down imposed authority, by moderating competing self-interests in order to promote mutual values Margaret Neale, *Nonprofit Management Are You Giving Away the Store? Strategies for savvy negotiation*. STANFORD SOCIAL INNOVATION REVIEW (Winter 2004). These constituencies, such as committee people, expect the right to participate in the decision-making process of the organizations they join, in this case the political party Freeman, *supra*.; Andrew Rasiej, *GOP Lags on the Internet Frontier*, Politico.com (April 13, 2007).

Because the party's every communications must be in support of its relationship with the voter (Churchill, 2006), the party must first mobilize committee people, who as direct intermediaries are the only means of peer-to-peer contact, because “The one thing committeepeople have down is peer-to-peer contact, which trumps all other types, including TV and radio.” Sasha Issenberg, *Campaign Journal: Manpower vs. Machine* PHILADELPHIA MAGAZINE (March, 2007), and secondly, the general public, both through the Internet, the only medium that delivers interactive social networking. David Iozzi and Lance Bennett, *Crossing the Campaign Divide: Dean Changes the Election Game*, Seattle: Univ. of Wash.(2004). The Internet is now the only means to successfully disseminate the ever increasing volume of information required for participatory political decision-making processes to correspond to the accretion of knowledge. (Foot & Schneider, 2006). A CRM application, such as We the People Today™ enables the party leadership to promote via the Internet peer to peer communications. Additionally, as a CRM such as We the People Today™ delivers universally disseminated information, the resulting transparency disciplines party leadership to focus on performance, (RIPA, 2007).

VII. Voter Registration by State.

State	Registration	Party	Deadline
Alabama	Yes	No	10 Days

Alaska	Yes	Yes (1)	30 Days
Arizona	Yes	No	29 Days
Arkansas	Yes	Yes (2)	30 Days
California	Yes	Yes (2)	15 Days
Colorado	Yes	Yes (4)	Election Day
Connecticut	Yes	Yes (5)	Election Day
Delaware	Yes	Yes	24 Days
D.C.	Yes	Yes	30 Days
Florida	Yes	Yes	29 Days
Georgia	Yes	No (2)	28 Days
Hawaii	Yes	No	30 Days
Idaho	Yes	Yes	25 Days
Illinois	Yes	Yes	27 Days
Indiana	Yes	No	29 Days
Iowa	Yes	Yes	10 Days
Kansas	Yes	Yes	21 Days
Kentucky	Yes	Yes	28 Days
Louisiana	Yes	Yes	30 Days
Maine	Yes	Yes	Election Day
Maryland	Yes	Yes	21 Days
Massachusetts	Yes	Yes	20 Days
Michigan	Yes	No	30 Days
Minnesota	Yes	No	21 Days
Mississippi	Yes	No	30 Days
Missouri	Yes	No	4th Wed Prior
Montana	Yes	No	30 Days
Nebraska	Yes	Yes	2d Fri Prior
Nevada	Yes	Yes	21 Days
New Hampshire	Yes	Yes	Election Day
New Jersey	Yes	Yes (6)	21 Days
New Mexico	Yes	Yes	28 Days
New York	Yes	Yes	25 Days
North Carolina	Yes	Yes (7)	25 Days
North Dakota	No	No	Election Day
Ohio	Yes	Yes (8)	21 Days
Oklahoma	Yes	Yes	Election Day
Oregon	Yes	Yes	21 Days
Pennsylvania	Yes	Yes	30 Days
Rhode Island	Yes	Yes	30 Days
South Carolina	Yes	No	30 Days
South Dakota	Yes	Yes	15 Days
Tennessee	Yes	No	30 Days
Texas	Yes	No	30 Days
Utah	Yes	Yes	15 Days
Vermont	Yes	No	Wed Prior
Virginia	Yes	No	22 Days
Washington	Yes	No	30 Days
West Virginia	Yes	Yes	21 Days
Wisconsin	Yes	No	Election Day
Wyoming	Yes	Yes	14 Days

- (1) Alaska Republicans require party affiliation. Alaska Democrats do not require party affiliation.
- (2) Arkansas, Georgia does not require party registration, but must vote in run-off in same party as in primary.
- (3) California has a modified party primary system.
- (4) Colorado requires party affiliation for voters who wish to vote in a party caucus or convention.
- (5) Connecticut requires party affiliation to vote in a party primary only.
- (6) New Jersey voters may declare party affiliation at the polls.
- (7) North Carolina unaffiliated voters may chose a party at polls.
- (8) Ohio voters may change party affiliation at polls.

Rule 3 The Trustee.

(a) **Scope.** — The scope of this Rule is the governance of the Trustee and Ancillary Trustees, and all agents appointed by the Trustee.

(b) **Powers and Duties.** —

(1) *Duties and Powers of Trustee.* As set forth pursuant to the Trust Agreement, there shall be one Trustee, who shall serve full-time, and charged with all powers and duties under Subchapter H of the Uniform Trust Act, 20 Pa.C.S. §§ 7771-7780.7, including the exercise of all illustrated powers within 20 Pa.C.S. § 7780.6(a)(1)-(33).

(2) *Appointment of Ancillary Trustees.* As set forth pursuant to 20 Pa.C.S. § 7780.6(32) and the TRUST AGREEMENT, ¶ 12 there shall be one additional Democratic and Republican ancillary trustee to be appointed by the Trustee, or in lieu of same, counsel to be appointed by the Trustee pursuant to 20 Pa.C.S. § 7777, designated as Beneficiary Counsel, for each respective jurisdiction, who in addition to all such powers and duties delegated or referred to them by the Trustee, shall specifically exercise the following powers and duties:

(A) Inform all beneficiaries of the availability of the Trust Property and assure that all beneficiaries are properly registered.

(B) Assure that the availability of the Trust Property and rights of all beneficiaries not be interfered or obstructed by any other beneficiary or person thereto.

(3) *Senior Trustees.* Former Trustees may be designated as Senior Trustees and if electing to be active, may perform all duties which may be assigned to Ancillary Trustees. Active Senior Trustees may be compensated at one-half of the Trustee's compensation plus continuation of healthcare insurance.

(4) *Appointment of General Counsel and Treasurer.* The Trustee shall, as authorized under 20 Pa.C.S. § 7777(a), exercise reasonable care, skill and caution to appoint a general counsel, treasurer or any number of same and an independent auditor who shall be a certified public accountant licensed within the Commonwealth of Pennsylvania.

(c) **Compensation, Reimbursement of Expenses.** —

(1) *Trustee's Compensation.* The Trustee shall be compensated as provided by the Trust Agreement.

(2) *Trustee's Expenses.* The Trustee shall be reimbursed for such duly authorized expenses,

provided however, the Endowment Funds as set forth within these Rules are fully replenished and the payment of such expense does not incur a deficit below that which is required to be maintained within such Endowment Funds.

(3) *Ancillary Trustee Compensation for Funds Raised.* Ancillary Trustees or any one acting in their place, or counsel retained by the Trustee to recover monies due the Trust, shall be compensated a commission for funds raised directly by them, as follows:

(A) \$00.01 to \$100,000 raised, a 5% commission.

(B) \$100,000.01 to \$200,000 raised, a 4% commission.

(C) \$200,000.01 to \$1,000,000 raised, a 3% commission.

(D) \$1,000,000.01 to \$2,000,000 raised, a 2% commission.

(E) \$2,000,000.01 to \$3,000,000 raised, a 1½% commission.

(F) \$3,000,000.01 to \$4,000,000 raised, a 1% commission.

(G) \$4,000,000.01 to \$5,000,000.00 raised, a ½% commission.

(4) *Ancillary Trustee Expense Reimbursement.* The Ancillary Trustees and all agents appointed by the Trustee shall be reimbursed for such duly authorized expenses, *provided however*, the Endowment Funds as set forth within these Rules are fully replenished and the payment of such expense does not incur a deficit below that which is required to be maintained within such Endowment Funds.

(5) *Waiver of Compensation and Reimbursement of Expenses.* The Trustee, Ancillary Trustees, and any agents appointed by the Trustee may waive all or any part of compensation due and receive compensation

(6) *Terms and Conditions of Appointment.* Pursuant to the Uniform Trust Act, 20 Pa.C.S. § 7780.5 and 20 Pa.C.S. § 7780.6(a)(32) and the TRUST AGREEMENT, Art. II, ¶ 20, the Ancillary Trustees shall, as required under 20 Pa.C.S. § 7777(a), accept as a term and condition of their appointment, the duty to exercise reasonable care, skill and caution, to appoint responsible persons to serve as ancillary trustees to discharge such powers and duties delegated by the Trustee as set forth within this Rule and thereafter to periodically review their actions in order to monitor their performance and compliance with the scope and specific terms of the delegation.

(d) **Prohibited Conduct.** —

- (1) *Prohibited conduct.* Each ancillary trustee shall not use or permit the use of his ancillary trustee position or title or any authority associated with his office in a manner that is
- (A) intended to coerce or induce another person, or to provide any benefit, financial or otherwise, to himself or to friends, relatives, or persons with whom the employee is affiliated in a nongovernmental capacity;
 - (B) that constitutes self-dealing or unjust enrichment, or otherwise maintain a personal interest in the administration of the Trust of such a substantial nature that it might have affected his judgment in any material connection, regardless of whether or not it does affect such judgment.
- (e) **Presumption Governing PASO Activities.** — Whenever any Ancillary Trustee engages in PASO activity, it shall be presumed that the Ancillary Trustee is acting in his individual capacity or as a candidate, officeholder or political party officeholder capacity, and at no time is acting in a capacity as an ancillary trustee.

Explanatory Comment

I. Duties of Trustees Generally.

The primary duty of a trustee is to follow the terms and purposes of the trust and to do so in good faith. Only if the terms of a trust are silent or for some reason invalid on a particular issue does the Uniform Trust Act govern the trustee's duties. In administering the trust, the trustee must not only comply with 20 Pa.C.S. § 7771 (Duty to administer trust) but also with the other duties specified in this Subchapter H, entitled "Duties and Powers of Trustee," particularly the obligation not to place the interests of others above those of the beneficiaries, as required under 20 Pa.C.S. § 7772 (Duty of loyalty); the duty to act with prudence, 20 Pa.C.S. § 7774 (Prudent administration); and the duty to keep the qualified beneficiaries reasonably informed about the administration of the trust. Pursuant to 20 Pa.C.S. § 7734 (Trust purposes), the trustee is not required to perform a duty prescribed by the terms of the trust if performance would be impossible, illegal or contrary to public policy. The Trustee, at all times, is required to administer the trust solely in the interests of the beneficiaries. 20 Pa.C.S. § 7772 (Duty of loyalty). The duty of loyalty is perhaps the most fundamental duty of the trustee. A trustee owes a duty of loyalty to the beneficiaries, a principle which is sometimes expressed as the obligation of the trustee not to place the trustee's own interests over those of the beneficiaries. Most but not all violations of the duty of loyalty concern transactions involving the trust property, but breaches of the duty can take other forms. In the case of a charitable trust, the trustee must administer the trust solely in the interests of effectuating the trust's charitable purposes. See Restatement, Second, Trusts § 379 cmt. a. Likewise, the duty to administer a trust with prudence is also a fundamental duty of the trustee. This duty does not depend on whether the trustee receives compensation.

Under Pennsylvania jurisprudence, the general rule is that "a trustee must exercise such prudence and diligence in conducting the affairs of the trust as men of average diligence and discretion

would employ in their own affairs." *In re Musser's Estate*, 341 Pa. 1, 10, 17 A.2d 411, 415 (1941). In other words, the usual "standard of care imposed upon a trustee is that which a man of ordinary prudence would practice in the care of his own estate." *In re Estate of Scharlach*, 809 A.2d 376, 384 (Pa.Super. 2002). However, "[i]f a fiduciary has greater skill than that of a person of ordinary prudence, then the fiduciary's standard of care must be judged according to the standard of one having this special skill." *Id.*, quoting *Estate of Pew*, 665 A.2d 521, 541 (Pa.Super. 1994). Accord, *Estate of Lohm*, 440 Pa. 268, 273, 260 A.2d 451, 454 (1970). "The trustee is under a duty to the beneficiary . . . and if the trustee has greater skill than that of a man of ordinary prudence, he is under a duty to exercise such a skill as he has." *In re Stirling's Estate*, 342 Pa. 497, 504, 21 A.2d 72, 76 (1941). The most cited authority concerning Trustees is the "Cardozo" standard in *Meinhard v. Salmon*, 249 N.Y. 458, 463-464, 164 N.E. 545, 546, 62 A.L.R. 1 (1928):

A trustee is held to something stricter than the morals of the market place. Not honesty alone, but the punctilio of an honor the most sensitive, is then the standard of behavior. As to this there has developed a tradition that is unbending and inveterate. Uncompromising rigidity has been the attitude of courts of equity when petitioned to undermine the rule of undivided loyalty by the "disintegrating erosion" of particular exceptions. Only thus has the level of conduct for fiduciaries been kept at a level higher than that trodden by the crowd. It will not consciously be lowered by any judgment of this court. *Id.* 249 N.Y. at 463-464, 164 N.E. at 546.

II. Duty to Act Impartially.

There is little dispute that it is well settled that Trustees must act impartially, as such is a mandate under the UTA, 20 Pa.C.S. § 7773(UTC 803). The NCCUSL comment to the Uniform Trust Code provides: "The duty of impartiality is an important aspect of the duty of loyalty. This section is identical to Section 6 of the Uniform Prudent Investor Act, except that this section also applies to all aspects of trust administration and to decisions by a trustee with respect to distributions. The Prudent Investor Act is limited to duties with respect to the investment and management of trust property. The differing beneficial interests for which the trustee must act impartially include those of the current beneficiaries versus those of beneficiaries holding interests in the remainder; and among those currently eligible to receive distributions."

"The duty to act impartially does not mean that the trustee must treat the beneficiaries equally. Rather, the trustee must treat the beneficiaries equitably in light of the purposes and terms of the trust." 20 Pa.C.S. § 7773. Bogert. This is well settled law not only in Pennsylvania, where the Trust is domiciled, *Estate of Sewell*, 487 Pa. 379, 409 A.2d 401 (1979) and *Snyder v. Penna. Dept. of Public Welfare*, 528 Pa. 491, 598 A.2d 1283 (1991) but is also the law in a multiple other states, see e.g., *Hughes v. Coffey*, 263 S.W. 689 (Ark. 1954), *In re Estate of Nicholas*, 223 Ca.Rptr. 410 (Ct. App. 1986); *Gimbel v. Bernard F. & Alva B. Gimbel Found.*, 347 A.2d 81 (Conn. 1974); *Cannon v. Denver Tamway Corp.*, 373 A.2d 580 (Del Ch. 1977); *Disher v. Fulgoni*, 514 N.E. 767 (Ill. App. 1987); *Hurst v. First Ky. Trust Co.*, 560 S.W.2d 819 (Ky. 1978); *Fogelin v. Bordblom*, 521 N.E.2d 1007 (Mass. 1988); *Matter of Great N. Iron Ore Properties*, 263 N.W. 2d 610 (Minn), cert. denied, 439 U.S. 835 (1978); *In Re Koretzky*, 86 A.2d 238 (N.J. 1951); *Redfield v. Critchley*, 300 N.Y.S.2d 327 (App. Div. 1937) affirmed 13 N.E.2d 377 (N.Y. 1938); *Pittman v. Barker*, 452 S.E.2d 326 (N.C.App.) review denied, 456 S.E.2d 833 (N.C. 1995); *N.D. Public Service Commission v. Valley Farmers Bean Assoc.*, 365 N.W.3d 528 (N.D. 1985); *Stevens v. National City Bank*, 544 N.E.2d 612 (Ohio 1989); *Sturgis v. Stinson*, 404 S.E.2d 56 (Va. 1991). Federal authority likewise holds the same. *United States v. Powell*, 307 F.2d 821 (10th Cir. 1962) (citing Kansas law);

Morse v. Stanley, 732 F.2d 1139 (2d Cir. 1984); *Dennis v. Rhode Island Hospital Trust National Bank*, 744 F.2d 893 (1st Cir. 1984) (Breyer, J.); *Marold v. United States*, 322 F.Supp. 664 (D.N.J. 1970); *Dunkley v. Peoples Bank & Trust Co.*, 728 F.Supp. 547 (W.D. Ark. 1989); *Sim Israel Navigation Co. v. 3-D Imports*, 29 F.Supp. 2d 186 (S.D.N.Y. 1998); *Williams v. Sec. National Bank*, 358 F.Supp.2d 782 (S.D. Iowa 2005).

In regard to the inherent nature of a political party, there will be the inevitable disputes within any party committee, be it local, state or national. As required by law, the rule of impartiality extends to a specific rule of remaining neutral in all disagreements or disputes between beneficiaries under Pennsylvania law, as such is where the Trust is domiciled, *King Estate*, 355 Pa. 64, 48 A.2d 858 (1946). This remains law in other states as well. See e.g., *Matter of Duke*, 702 A.2d 1008 (N.J. Super. Ct. Ch. Div. 1995) affirmed, 702 A.2d 1007 (N.J. Ct. App. Div.) cert. denied, 697 A.2d 546 (N.J. 1997) (in dispute over who is beneficiary, trustee must not favor one party over another); *In re Cudahy Family Trust*, 131 N.W.2d 882 (Wis. 1965).

The Trustee remains required to carry out the settlor's intent, *Estate of Niessen*, 489 Pa. 135, 138, 413 A.2d 1050, 1052 (1980); *Godley v. Valley View State Bank*, 89 P.3d 595, 600 (Kan. 2004), the test governing the trustee is not whether he acted as the beneficiaries would want him to act, but in "that state of mind" contemplated by the Settlor. *In re Scheidmantel*, 868 A.2d 464 (Pa.Super. 2005); Restatement Third, Trusts §50, Comment c; Scott & Fratcher. SCOTT ON TRUSTS § 187.3

III. Duty of Loyalty and The Rule of Strict Prohibition.

In addition to the duty of impartiality there is also the duty of loyalty. 20 Pa.C.S. § 7772. The Trustee is to administer the "solely in the interest of the beneficiaries." "The duty of loyalty is, for trustees, particularly strict even by comparison to the standards of other fiduciary relationships." Restatement Third, Trusts § 78 comment a at p. 74.

The fiduciary duty of undivided loyalty in the trust context * * * is particularly intense so that, in most circumstances, its prohibitions are absolute for prophylactic reasons. The rationale begins with a recognition that it may be difficult for a trust to resist temptation when personal interests conflict with fiduciary duty. In such situations, for reasons peculiar to typical trust relationships, the policy of the trust law is to prefer (as a matter of default law) to remove altogether the occasions of temptation rather than to monitor fiduciary behavior and attempt to uncover and punish abuses when a trustee has actually succumbed to temptation. This policy of strict prohibition also provides a reasonable circumstantial assurance (except as waived by the settlor or an affected beneficiary) that beneficiaries will not be deprived of a trustee's disinterested and objective judgment. Restatement Third, Trusts § 78 comment b at p. 96.

The trustee's duty of good faith requires that the trustee act honestly and with undivided loyalty to the interests of the trust and its beneficiar(ies). In essence, this means that the trustee cannot put his own interests (frequently referred to as self-dealing), or the interests of third parties, ahead of the interests of the trust. George G. Bogert & George T. Bogert, BOGERT ON TRUSTS AND TRUSTEES, §235-241 (2nd ed. 1978); *Cf. Re Hubbard's Will*, 97 N.E.2d 888 (N.Y. 1959) (trustee must subordinate his interest to that of trust).

While the Trustee is not necessarily lawyers he is still within the realm of the court because they are fiduciaries, subject to court control. 20 Pa.C.S. § 711(12), in that courts can appoint trustees and more importantly, surcharge or remove trustees. 20 Pa.C.S. §§ 711(12), 7766, *Estate of Thompson*, 426 Pa. 270, 275, 232

A.2d 625, 628 (1967) (a trustee is an officer of Orphans' court who is accountable for the performance of his fiduciary duties, including payments from the estate to compensate himself or his counsel); *First National Bank v. A.M. Castle & Co Employee Trust*, 180 F.3d 814, 819 (7th Cir. 1999) (Posner, C.J.) quoting *Thompson*, 426 Pa. at 281, 232 A.2d at 630 ("Furthermore, it is axiomatic that in civil suits concerning a trust, all of a trustee's actions are subject to the court's scrutiny and control"); *Estate of Wallace*, ___ Fiducy. Rep. 2d ___ (Phila.O.C. 1994) (Herron, J.), ("trustee is an officer of Orphans' court who is accountable for the performance of his fiduciary duties, including payments from the estate to compensate himself or his counsel quoting *Thompson*, 426 Pa. at 275, 232 A.2d at 628"); and see also *Three Keys Ltd v. SR Utility Holding Co.*, 540 F.3d 220 (3d Cir. 2008) citing *Byers v. McAuley*, 149 U.S. 608, 615 (1893) ("An administrator appointed by a state court is an officer of that court. His possession of the decedent's property is a possession taken in obedience to the orders of that court. It is the possession of the court, and it is a possession which cannot be disturbed by any other court."); *In re Rentschler's Estate*, 139 A.2d 910, 918 (Pa. 1958) (removing an executor because he lost the confidence of the court); *In re Estate of Alexander*, 758 A.2d 182, 187 (Pa. Super. 2000) (stating that an executor is an officer of the court). (In Pennsylvania, the terms administrator, executor, trustee and personal representative are all interchangeable terms regarding to fiduciary. 20 Pa.C.S. § 102).

IV. Compensation.

In *In re Johnson Estate*, 4 Fiduc. Rep.2d 6, 8 (Chester O.C. 1983) Judge Wood adopted fee schedule which was originally adopted, but later reacted by the Attorney General. Other orphans courts followed suit. See e.g., *In re Loutsion Estate*, 4 Fiduc. Rep.2d 224, 232 & n.3 (Washington Co. O.C. 1984) (5% up \$100,000, 4% up to \$250,000, 3% up to \$500,000, 2.5% up to \$1,000,000 and 2% on the balance). The issue continues to be hotly contested. See criticism of *In re Johnson Estate* in *Nix Estate*, 8 Fid.Rep.2d 179 (O.C. Chester 1988) (Editor's note); 5A Remick's Pennsylvania Orphans Court Practice § 39:10 (Supp. 1997) *Preston Estate*, 558 Pa.Super. 48, 560 A.2d 160 (1989) (egregious error to rely on sliding scale rate without determining reasonableness). But see *Carr Estate*, 22 Fid.Rep.2d 364 (O.C. Mont. 2002); *Fesse Estate*, 21 Fid.Rep.2d 317 (O.C. Mont. 2001); *Bailey Estate*, 10 Fid.Rep.2d 55 (O.C. Chester 1990); *Pedrick Estate*, 19 Pa. D&C.4th 360, 13 Fid.Rep.2d 240 (O.C. York 1993).

The general rule In determining the reasonableness of attorney fees, Pennsylvania courts consider the following facts and factors is: the amount of work performed; the character of the services rendered; the difficulty of the problems involved; the importance of the litigation; the amount of money or value of the property in question; the degree of responsibility incurred; whether the fund involved was 'created' by the attorney; the professional skill and standing of the attorney in his profession; the results he was able to obtain; the ability of the client to pay a reasonable fee for the services rendered; and, very importantly, the amount of money or the value of the property in question. *LaRocca Estate*, 431 Pa. 542, 546, 246 A.2d 337, 339 (1968); *Estate of Burch*, 402 Pa. Super. 314, 318, 586 A.2d 986, 988 (1991). The Trustee adheres to the *Johnson Estate* rule, primarily as persuasive authority, leaving any eventual conclusion to review by the court. *Vandergrift Estate*, 406 Pa. 14, 34, 177 A.2d 432, 433 (1962).

Rule 4 Beneficiaries.

(a) **Scope.** — The scope of this Rule concerns the rights of the Beneficiaries and parties in interests

(b) **Definition of Beneficiary per State charitable solicitation laws.** — For purposes of state charitable solicitation registration laws, all beneficiaries shall be considered as members, in that beneficiary rights under the Pennsylvania Uniform Trust Act and the Trust Agreement confers a bona fide right, privilege, professional standing, honor, or other direct benefit, specifically use of the Trust Property, in addition to the right to vote, elect officers, or hold offices, as the right to approve a successor trustee, 20 Pa.C.S. § 7765(d) (UTC 704) and see Trust Agreement, ¶ 12 electing the option of unanimous consent with attorney general approval under 20 Pa.C.S. ¶ 7765(d)(2), otherwise the court appoints the successor; and remove the trustee by operation of law, 20 Pa.C.S. § 7766 (UTC 706) is analogous to right to vote or elect officers or hold offices.

(c) **Registration.** —

(1) *Initial Registration.* All Qualified and Current Beneficiaries shall register with the Trustee to obtain access to the Trust Property; receive earmark Federal campaign, non-Federal campaign or Levin Fund contributions; or participate in any services provided by the Trust, so that the Trustee can provide legal notice as required by the Internal Revenue Code and the Pennsylvania Uniform Trust Act. Registration shall constitute acceptance of the terms and conditions imposed by the EULA as provided under Rule 2.

(2) *Information required for Initial Registration.* Initial Registration by a State, County, or Local Political Party Committee or by any Current Organizational Beneficiary shall include

- (A) Full name.
- (B) State (or FEC) filing number.
- (C) IRS Tax Identification Number.
- (D) Name, address, landline and cell phone number, and email addresses of committee officers.
- (E) Name, address, landline and cell phone number, and email addresses of all members; *Except that* large state or county party committees may list area, district, regional or ward leaders, who in turn are required to file registration statement with balance of members of the county or local party committee.
- (F) Certification by the appropriate corporate officer, i.e. secretary as to the veracity of the registration and

compliance with all applicable Federal and/or state campaign finance laws.

(G) In those states which state law imposes limitations on campaign contributions, certification by legal counsel or attorney of record that distribution of the Trust Property under IOP Rule 6(g) constitutes a campaign contribution under the state campaign finance laws; that the basis thereto estimated by the Trustee do not exceed any applicable campaign contribution limits imposed thereto by state law; and that there are no other prohibitions or restrictions that would otherwise render the distribution void or taxable under state law; and there is prohibitions or restrictions, whether bypass of the political party committee is required.

(3) *Annual Individual Beneficiary Registration.* After initial registration by a State, County or Local Political Party Committee, each individual Qualified and Current Beneficiary shall provide the Trustee

- (A) Full name.
- (B) Office or position and precinct, district, county, or state elected or appointed to serve.
- (C) Office and/or home address, city, state, nine-digit zip code.
- (D) Office, home and cell phone numbers with indication of preference.
- (E) Office and home email addresses, with indication of preference.

(4) *Distribution.* Nothing within this Rule shall prohibit the Trustee from distributing the Trust Property to members of political committees if and when in the opinion of the Trustee, distribution of the Trust Property to the committee in lieu of the member would be abridged or impaired by any applicable campaign finance law.

(d) **Grievance Resolution Procedures.** —

(1) *Alternate Dispute Resolution.* With respect to any dispute as to the interpretation or administration of the trust regarding enforcement of rights, all claims, except claims against the Trustee pursuant to Subchapter I of Chapter 77 of the PEF Code, 20 Pa.C.S. §§ 7781-7790, all Beneficiaries agree to abide by and shall submit to alternate dispute resolution under this Rule by which the Trustee is authorized by law to implement, 20 Pa.C.S. § 77806(a)(3) and whenever arbitration is so ordered by the Trustee to resolve a dispute between co-beneficiaries, the Trustee shall

serve as the arbitrator as set forth under subchapter B of Chapter 73 of the Judiciary Code, the Pennsylvania Uniform Arbitration Act, 42 Pa.C.S. §§ 7301-7362.

- (2) *Grievances.* Any beneficiary may initiate proceedings to evoke arbitration to seek surcharge for breach of fiduciary duty by any Qualified Beneficiary or beneficiary pursuant to the Trust Agreement, ¶ 8(E). Enforcement shall be evoked by a beneficiary filing a grievance with the Trustee who shall first docket the grievance as a Matter under Review (“MUR”) and then review such grievance *in camera* and regarding the allegations:

- (A) shall notify the respondent beneficiary the nature of such grievance and require a reply answering the grievance; or
- (B) dismiss the grievance, or if there is no genuine dispute of material facts and concerns interpretation; or
- (C) if the grievance concerns interpretation or administration of the trust, the Trustee may proceed to issue an Advisory Opinion in furtherance of mediation efforts.

- (3) *Arbitration.* If the Trustee finds mediation will not resolve the grievance, the Trustee shall commence arbitration pursuant to 42 Pa.C.S. § 7342 and conduct the hearing pursuant to the Federal Rules of Civil Procedure.

- (4) *Enforcement.* The Trustee may at his discretion file an Award of Arbitration with the appropriate Federal court where the one or more of the respondent beneficiaries are domiciled pursuant to 9 U.S.C. § 9, or the Orphans Court division pursuant to 42 Pa.C.S. § 7342(b) enumerating the findings of fact and conclusions of law in support of his decision under these Rules, or file an action for a declaratory judgment or to enforce trust, 20 Pa.C.S. § 7735(c), or any other or additional remedy at law in furtherance of his duties to administer the Trust, including the impoundment of proceeds otherwise due the respondent beneficiary as authorized under the Trust Agreement, ¶ 8(E).

- (5) *Legal Fees.* The surcharge shall include any and all legal fees incurred by the Trustee during the arbitration, including enforcement of any judgment upon confirmation of the award by the court pursuant to 42 Pa.C.S. § 7342(b) or any other remedy at law.

(e) Eligibility for Distribution of Earmarked Funds by the Trustee. —

- (1) To be eligible for distribution of earmarked non-Federal campaign contributions received

by the Trustee, all Beneficiaries must certify on an annual basis that

- (A) There are no legal prohibitions to the Trust acting as a conduit which shall include any certifications authorizing the Trust to act on behalf of the Beneficiary if required by law.
- (B) The Beneficiary has registered with the respective state campaign finance authority.
- (C) The Beneficiary has a chairman and a treasurer as required by law.
- (D) The Beneficiary is in full compliance with governing state campaign finance law including satisfactory registration with the state campaign finance authority and no enforcement actions are pending or have been undertaken by the state campaign finance authority against the beneficiary.
- (E) The Beneficiary agrees that prior to distribution of the earmarked contribution to the Beneficiary the Trustee shall be reimbursed out of the earmarked contribution before distribution to the for all out-of-pocket transactional expenses incurred in the solicitation, collection and distribution of the earmarked contributions; and not less than a five percent assessment for deposit into the Trust Administration Account and not less than a ten percent assessment for deposit into the Trust Endowment Account until such time that the required allotments as set forth under IOP Rule 7 are reached; and that any surcharges therein due of any political party under the Trust Agreement, ¶ 8(E) shall be first satisfied; the recording of such shall be marked as an expenditure by the Beneficiary paid to the Trustee.
- (F) The Beneficiary agrees to be solely and exclusively responsible for reporting the earmarked contribution to the state campaign finance authority or other regulatory authority and that the earmarked contribution is otherwise in full compliance with state or local campaign finance law, including statutory limits if therein imposed.

- (2) To be eligible for distribution of Levin Fund contributions, all Qualified Beneficiaries must certify on an annual basis, the following in addition to the requirements under Rule 4(i)(1):

- (A) that the Qualified Beneficiary has as

required by 11 CFR 300.33(b)(10)-(4) used a minimum percentage of Federal funds which if both a presidential and a senatorial candidate is on the ballot, 36% of expenses incurred must be allocated to the Federal account, or if no senatorial candidate is on the ballot in a presidential election, 28% of the expenses incurred must be allocated to the Federal account, or in non-presidential election years when a senatorial candidate is on the ballot, 21% of the expenses incurred must be allocated to the Federal account, and if no senatorial candidate appears on the ballot, 15% of the expenses incurred must be allocated to the Federal account.

- (3) To be eligible for distribution of Federal campaign contributions, all Qualified and Current Beneficiaries must certify on an annual basis, the following in addition to the requirements under Rule 4(i)(1):

(A) The Beneficiary is full compliance with FECA including satisfactory registration with the FEC and no enforcement actions are pending or have been undertaken by the FEC against the beneficiary.

- (f) **Liability for Reporting as Contribution.** — As a further condition and term, all beneficiaries under this Rule shall indemnify and hold harmless the Trustee from any and all liability for reporting the payment of the Licensing Fee or any other contribution under this Rule as a charitable or political contribution, expenditure or disbursement required to be reported by Federal or state law governing solicitation of charitable contributions or political contributions. A statement to this effect shall be provided by all candidates on official letterhead or by counsel representing the candidate or candidate's campaign committee.

- (g) **Service of Process, Notices under Law.** — All beneficiaries, regardless if registered under this Rule or otherwise, consent to receive any and all notices required under 20 Pa.C.S. § 7780.3, or other applicable law and service of process, original or otherwise, from the Trustee by electronic mail pursuant to Pa.O.C. Rule 3.7(h), unless the beneficiary instructs the Trustee otherwise.

Explanatory Comment

I. Beneficiary Standards of Conduct.

Each Democratic or Republican committee, be it a national, state, or county committee, stands equal in the eyes of the Trustee. 20 Pa.C.S. § 7773 (UTC 803), *Estate of Pew*, 440 Pa.

Super. 195, 655 A.2d 521 (1994) (no preferential treatment of beneficiaries); *Snyder v. Dep't of Public Welfare*, 528 Pa. 491, 498 & n.7, 598 A.2d 1283, 1287 & n.7 (1981) beneficiaries must be treated impartially; and see also *Shaak v. Pennsylvania Dep't of Public Welfare*, 561 Pa. 12, 747 A.2d 883,886 (2000) .

Moreover, each committee, by virtue of being a beneficiary, now is imposed a duty to interact, when concerning the affairs of the Trust, with all other Democratic or Republican committees, as co-beneficiaries. *DuPlaine's Estate*, 185 Pa. 332, 334-335, 39 A. 947, 948 (1898). As stated by George Gleason Bogert & George Taylor Bogert, BOGERT, THE LAW OF TRUSTS AND TRUSTEES, § 191 "Duties of Beneficiaries" at 478 (rev. 2d ed 1979)

Co-beneficiaries are owners of equitable interests in the same res and are generally tenants in common. They are in a fiduciary relation to each other in the sense that one beneficiary may not secretly secure for himself a special advantage in trust administration. * * * A beneficiary owes to his co-beneficiaries the duty from instigating a breach of trust, persuading the trustee to violate his trust, or taking part with the trust in a breach. If a beneficiary commits an act which violates this duty he may be required to reimburse the trust fund or his co-beneficiaries for the damages suffered, his interest under the trust being impounded for that purpose.

This law is well settled. *Fresh Kist Produce LLC v. Choi Corp. Inc.*, 223 F.Supp. 1, 8, (D.D.C. 2002) amended on other grounds 251 S.Supp.2d 138, which held, citing Bogert, *supra*, that under trust law, co-beneficiaries are in a fiduciary relationship with each other so that one beneficiary may not secretly secure for himself a special advantage in the trust administration. In *Christman v. Seymour*, 145 Ariz. 200, 202, 700 P.2d 898, 900 (1985) the court acknowledged that [the defendant] "concedes that as a beneficiary of the trust he owed a fiduciary duty to the other beneficiaries. This duty has been characterized by Bogert § 191 (rev. 2d ed. 1979) as requiring that one beneficiary not obtain 'for himself a special advantage in trust administration.'" See also *Capital Investors Co. v. Devers*, 360 F.2d 462, 465-466 (4th Cir. 1966).

II. Election to Bypass Committees.

The Trustee is governed by the express intent of the settlor, *In re McCune*, 705 A.2d 861, 867, (Pa. Super. 1997), *app. denied*, 555 Pa. 720, 724 A.2d 953 (1998) ("In Pennsylvania, the law honors a settlor's right to determine the disposition of his estate"); *In re Alloy Manufacturing Company Employees Trust*, 411 Pa. 492, 495-96, 192 A.2d 394, 396 (1963), as "[t]he intent of the settlor is paramount: It is still hornbook law that the pole star in every trust (as in every will) is the settlor's (or testator's) intent and that intent must prevail. It is moreover well settled that such intent is found within the four corners of the trust instrument. *Farmers Trust Co. v. Bashore*, 498 Pa. 146, 150, 445 A.2d 492, 494 (1982). Distribution of the Trust Property directly to individual beneficiaries is found to be prudent, because various state campaign finance laws may prohibit distribution of the Trust Property to the committee. According, this Rule allows the Trustee to bypass the committee for the individual beneficiary, if either the campaign finance laws impose a contribution ceiling which the committee's basis on the Trust Property would exceed.

The following table from Fiegenbaum, *Campaign Finance Laws 2002*, Wash.D.C.: FEC (2002) summarizes the campaign finance laws per state, with "None" being no campaign contribution limits imposed, "aggregate" being a single campaign contribution limit imposed statewide regardless of the number of committees, "per committee" means the campaign contribution limit is imposed per committee, and "exempted" means that the contribution of the Trust Property is exempted by state law

notwithstanding the campaign contribution limits, with indication of which counties whose basis apparently exceeds the state's campaign contribution limits. The publication date necessarily implies caution as to the information's reliability.

Alabama	None	
Alaska	\$5,000	Aggregate
(all 27 counties)		
Arizona	None	ARS § 16-905(E)
Arkansas	None	
California	\$25,000	Per Committee

The following counties are subdivided into their respective Assembly or Supervisory Districts per CA Election Code § 7200: Alameda (5 Assembly districts), Los Angeles (26 Assembly districts), Orange (9 Assembly districts), Riverside (5 Supervisory districts), Sacramento (5 Supervisory districts), San Bernadino (5 Supervisory districts), San Diego (17 Assembly districts) and Santa Clara (5 Supervisory districts).

Colorado	\$3,175	Aggregate
	\$2,650 limit to state party committee (all 64 counties)	

Connecticut	None	
Delaware	\$20,000	
D.C.	\$5,000	
Florida	None	
Georgia	None	
Hawaii	\$50,000	
Idaho	None	
Illinois	None	
Indiana	None	
Iowa	None	
Kansas	\$5,000	Per Committee

The following counties are divided into their respective incorporated cities and townships: Johnson (29) and Sedgwick (47).

Kentucky	\$2,500	Aggregate
(all 102 counties)		
Louisiana	\$100,000	4-yr aggregate
Maine	None	
Maryland	\$367,950	\$1 per 2 voters 4yr
Massachusetts	\$5,000	Per Committee

The following counties are subdivided into their respective towns or cities: Bristol (20), Essex (34), Hampden (25), Middlesex (54), Norfolk (28), Plymouth (25), Suffolk (22 wards within City of Boston) and Worcester (25).

Michigan	None	
Minnesota	None	
Mississippi	None	
Missouri	None	
Montana	None	
Nebraska	None	
Nevada	None	
New Hampshire	None	
New Jersey	\$37,000	Per Committee
New Mexico	None	
New York	\$76,500	Per Committee
North Carolina	None	
North Dakota	None	
Ohio	\$5,000	Per Committee

The basis of the following ten counties, Butler, Cuyahoga, Franklin, Hamilton, Lorain, Lucas, Mahoning, Montgomery, Stark and Summit, remain above the state's per committee contribution limit.

Oklahoma	\$5,000	Aggregate
(all 77 counties)		
Oregon	None	
Pennsylvania	None	
Rhode Island	\$35,000	
South Carolina	\$3,500	Per Committee

The following counties are subdivided into their respective

precinct party clubs per CLSC §7-90-30: Anderson (76), Charleston (182), Greenville (139), Horry (118), Lexington (88), Richland (125), Spartanburg, (92) and York (63).

South Dakota	None	
Tennessee	None	
Texas	None	
Utah	None	
Vermont	\$2,000	Per Committee
Crittenden county	is subdivided into its respective 17 towns.	
Virginia	None	
Washington	Exempted	
West Virginia	\$1,000	Per Committee

The following counties are subdivided into their respective magisterial districts per W.V.C. §3-1-9(c): Berkeley (6), Cabell (5), Harrison (10), Jefferson (5), Kanawha (4), Marion (4), Mercer (3), Monongalia (3), Putman (3), Raleigh (3) and Wood (3). Currently, Kanawha County's basis is \$22 above the campaign contribution limit.

Wisconsin	\$6,000	Aggregate
(all 72 counties)		
Wyoming	None	

III. Closed and Open Primaries by State.

Thirteen states — Connecticut, Delaware, Florida, Kentucky, Maine, Nebraska, Nevada, New Jersey, New Mexico, New York, Oklahoma, Pennsylvania, and South Dakota — have closed primaries.

Fifteen states — Alaska, Arizona, California, Colorado, Iowa, Kansas, Massachusetts, New Hampshire, North Carolina, Oregon, Rhode Island, Utah, West Virginia, and Wyoming — have semi-closed primaries that allow voters to register or change party preference on election day.

Open primaries are when voters can participate in any party primary. Vermont is one such state. Semi-open primaries are when voters request a party-specific ballot before casting their ballot, although such is not public information. A similar system known as a nonpartisan blanket primary has been used in Louisiana for state and local elections since 1976, and began in Washington, after numerous court challenges, in 2008.

In California, under Proposition 14, a measure that easily passed, traditional party primaries were replaced in 2011 with wide-open elections. Proposition 14, known as the open primary measure, will give every voter the same ballot in primary elections for most state and federal races, except the presidential contest.

States with an open presidential primary are:

Alabama
Arizona (Semi-closed, with primaries open only to unaffiliated or unrepresented voters, except for the Libertarian Party of Arizona primary.)
Arkansas
Georgia
Hawaii (Open primary for state, local, and congressional races; caucus system for presidential races.)
Illinois
Massachusetts (All races' primaries open for "unenrolled"/unaffiliated voters only)
Michigan
Minnesota
Mississippi
Missouri
New Hampshire
North Carolina
North Dakota
South Carolina
Tennessee
Texas

Vermont
Virginia
Wisconsin

IV. Election Cycles by State.

The following table represents the Trustee's best understanding of state and statewide elected officeholders and does not include county or municipal or trial or subordinate court elections.

Alabama

2014: Governor, Lt. Governor, Secretary of State, Attorney General, Treasurer, Auditor, Commissioner of Agriculture and Industry all elected to 4 year term
U.S. Senate: Class 2, 2014, Class 3, 2016
U.S. House: 7.
State Senate: 35, 4 year term.
State House: 105, 4 year term.
Judicial elections Supreme Court, Court of Civil Appeal, Court of Criminal Appeal (partisan).

Alaska

2014: Governor, Lt. Gov. (Elected on a ticket with Governor, but nominated separately)
U.S. Senate: Class 2, 2014, Class 3, 2016.
U.S. House: 1.
State Senate: 20, 4 year term (Half elected every two years).
State House: 40, 2 year term.

Arizona

2014: Governor, Sec. of State, Attorney General, Treasurer, Mine Inspector, Supt. of Public Instruction: all 4 year term.
U.S. Senate: Class 3, 2016, Class 1, 2012.
U.S. House 8.
State Senate: 30, 4 year term, 2008.
State House: 60, 2 year term.

Arkansas

2014: Governor, Lt. Governor, Sec. of State, Attorney General, Treasurer, Auditor, Commissioner of State Lands all 4 year term.
U.S. Senate: Class 2, 2014, Class 3, 2016.
U.S. House 4.
State Senate: 35, 4 year term (18 in Presidential election years, 17 in gubernatorial election years).
State House: 100, 2 year term.
Judicial elections Supreme Court, Court of Appeals (non-partisan).

California

2014: Governor, Lt. Gov. Sec. of State, Controller, Treasurer, Attorney General, Insurance Commissioner, Supt. of Public Instruction all 4 year term.
U.S. Senate: Class 3, 2016, Class 1, 2018.
U.S. House 53.
State Senate: 40, 4 year term (Half elected every two years).
State House: 80, 2 year term.

Colorado

2014: Governor, Lt. Gov. (elected on ticket with governor), Sec. of State, Treasurer, Attorney General all 4 year term.
U.S. Senate: Class 2, 2014, Class 3, 2016.
U.S. House 7.
State Senate: 35, 4 year term (17 in Presidential election years, 18 in gubernatorial election years).
State House: 65, 2 year term.

Connecticut

2014: Governor, Lt. Gov. (elected on a ticket with but nominated separately from the Governor), Sec. of State, Treasurer, Comptroller, Attorney General, all 4-year term.

U.S. Senate: Class 3, 2016, Class 1, 2018,
U.S. House 5.
State Senate: 36, 4 year term (all elected in Presidential election years).
State House: 151, 2 year term.

Delaware

2014 Attorney General, Treasurer, Auditor, 4 year term.
2016: Governor, Lt. Gov., Comr. of Insurance, 4 year term.
U.S. Senate: Class 2, 2014, Class 1, 2018
U.S. House 1.
State Senate: 21, 4 year term (11 in Presidential election years, 10 in gubernatorial election years).
State House: 41, 2 year term.

District of Columbia

2014: Mayor 4 year term.
Home Rule U.S. House (non-voting Delegate): 1, two year term

Florida

2014: Governor: Lt. Gov. (elected on ticket with governor), Attorney General, Chief Financial Officer, Commissioner of Agriculture and Consumer Services, all 4 year term
U.S. Senate: Class 3, 2016, Class 1, 2018.
U.S. House: 25.
State Senate: 40, 4 year term (Half elected every two years).
State House: 120, 2 year term.

Georgia

2014: Governor: Lt. Gov., Sec. of State, Attorney General, Comptroller, Commissioner of Agriculture, Supt. of Education, Commissioner of Labor, all 4-year term.
U.S. Senate: Class 2, 2014, Class 3, 2016.
U.S. House 13.
State Senate: 56, 4 year term (All elected in Presidential election years)/
State House: 180, 2 year term.
Judicial elections Supreme Court, Court of Appeals (non-partisan)

Hawaii

2014: Governor, Lt Gov. (elected on same ticket with, governor, but nominated separately) both 4-year term.
U.S. Senate: Class 3, 2016, Class 1, 2018. U.S. House 2.
State Senate: 25, 4 year term (12 elected in Presidential election years, 13 elected in gubernatorial election years).
State House: 51, 2 year term.

Idaho

2014: Governor, Lt. Gov, Sec of State, Attorney General, Treasurer, Controller, Supt. of Public Instruction, each 4-year term.
U.S. Senate: Class 2, 2014, Class 3, 2016.
U.S. House 2.
State Senate: 35, 4 year term (All elected in Presidential year).
State House: 70.
Judicial elections Supreme Court, Court of Appeals (non-partisan)

Illinois

2014: Governor, Lt. Gov. (elected on a ticket with governor, but nominated separately), Sec of State, Attorney General, Treasurer, Comptroller, each 4-year term
U.S. Senate: Class 2, 2014, Class 3, 2016.
U.S. House: 19.
State Senate: 59, 4 year term (39 elected in Presidential election year, 20 elected in gubernatorial election years).
State House: 118.
Judicial elections multiple courts (partisan)

Indiana

2012: Governor, Lt. Gov., (elected on ticket with governor), Attorney General, Superintendent of Public Instruction, all 4-year term

2014: Sec of State, Treasurer, Auditor, all 4-year term,

U.S. Senate: Class 3, 2016, Class 1, 2018.

U. S. House 9.

State Senate: 50, 4 year term (Half elected every two years).

State House: 100, 2 year term.

Iowa

2014: Governor, Lt. Gov., (elected on ticket with governor), Sec of State, Attorney General, Treasurer, Auditor, Secretary of Agriculture and Land Stewardship, all 4-year term

U.S. Senate: Class 2, 2014, Class 3, 2016.

U.S. House: 5.

State Senate: 50, 4 year term (Half elected every two years).

State House: 100, 2 year term.

Kansas

2014: Governor, Lt. Gov. (elected on ticket with governor), Sec of State, Attorney General, Treasurer, Commissioner of Insurance, all 4-year term.

U.S. Senate: Class 2, 2014, Class 3, 2016.

U.S. House: 4.

State Senate: 40, 4 year term (All elected in Presidential year).

State House: 125, 2 year term.

Kentucky

2011: Governor, Lt. Gov., (elected on ticket with governor), Sec of State, Attorney General, Treasurer, Auditor of Public Accounts, Commissioner of Agriculture, all 4-year term.

U.S. Senate: Class 2, 2014, Class 3, 2016. U.S. House: 6.

State Senate: 38, 4 year term (Half elected every two years).

State House: 100, 2 year term.

Judicial elections Supreme Court, Court of Appeals (non-partisan)

Louisiana

2015: Governor, Lt. Gov. (elected separately from Governor), Sec of State, Attorney General, Treasurer, Commissioner of Agriculture and Forestry, Commissioner of Insurance: all 4-year term.

U.S. Senate: Class 2, 2014, Class 3, 2016.

U.S. House 7.

State Senate: 39, 4 year term .

State House: 105, 2 year term.

Judicial elections Supreme Court, Court of Appeals (partisan)

Maine

2014: Governor: 4 year term

U.S. Senate: Class 2, 2014, Class 1, 2018.

U.S. House 2.

State Senate: 35, 4 year term (All elected in Presidential election years).

State House: 151.

Maryland

2014: Governor, Lt. Gov. (elected on ticket with governor), Attorney General, Comptroller all 4-year term.

U.S. Senate: Class 3, 2016, Class 1, 2018. U.S. House 8.

State Senate: 47, 4 year term.

State House: 141.

Massachusetts

2014: Governor, Lt. Gov., (elected on ticket with governor, but nominated separately), Secretary of the Commonwealth, Attorney General, Treasurer and Receiver-General, Auditor, all 4-year term.

U.S. Senate: Class 2, 2014, Class 1, 2012.

U.S. House 10.

State Senate: 40, 4 year term (All elected in Presidential year).

State House: 160.

Michigan

2014: Governor, Lt. Gov. (elected on ticket with governor, but nominated by convention separately from gubernatorial primary), Sec of State, Attorney General, all 4-year term

U.S. Senate: Class 2, 2014, Class 1, 2018.

U.S. House 15.

State Senate: 38, 4 year term (2010).

State House: 110.

Judicial elections Supreme Court (partisan), Court of Appeals (non-partisan)

Minnesota

2014: Governor, Lt. Gov. (elected on ticket with governor), Sec of State, Attorney General, Auditor, all 4-year term.

U.S. Senate: Class 2, 2014, Class 1, 2018.

U.S. House 8.

State Senate: 67, 4 year term.

State House: 134.

Judicial elections Supreme Court, Court of Appeals (non-partisan)

Mississippi

2011: Governor: Lt. Gov., Sec of State, Attorney General, Treasurer, Auditor of Public Accounts, Commissioner of Agriculture and Commerce, Commissioner of Insurance, all 4-year term.

U.S. Senate: Class 2, 2008, Class 1, 2018.

U.S. House 4.

State Senate: 52, 4 year term.

State House: 122.

Judicial elections Supreme Court, Court of Appeals (non-partisan)

Missouri

2012: Governor, Lt. Gov., Sec of State, Attorney General, Treasurer, all: 4-year term,

2014: Auditor, 4-year term.

U.S. Senate: Class 3, 2016, Class 1, 2018.

U.S. House 9.

State Senate: 34, 4 year term (Half elected every two years).

State House: 163.

Montana

2012: Governor, Lt. Gov., (elected on ticket with governor), Sec of State, Attorney General, Auditor, Superintendent of Public Instruction all 4 year term.

U.S. Senate: Class 2, 2014, Class 1, 2018.

U.S. House 1.

State Senate: 40, 4 year term (25 in Presidential election years, 15 in gubernatorial election years).

State House: 100.

Judicial elections Supreme Court (non-partisan).

Nebraska

2014: Governor, Lt. Gov., (elected on a ticket with governor), Sec of State, Attorney General, Treasurer, Auditor of Public Accounts, all 4-year term

U.S. Senate: Class 2, 2014m Class 1, 2018. U.S. House 3.

State (unicameral) Senate: 49, 4 year term (25 in Presidential election years, 24 in gubernatorial election years).

Nevada

2014: Governor, Lt. Gov., Sec of State, Attorney General, Treasurer:, Controller, all 4- year term.,

U.S. Senate: Class 3, 2016, Class 1, 2012. U.S. House 3.

State Senate: 21, 4 year term (10 in Presidential election years,

11 in gubernatorial election years).
State House: 42.
Judicial elections Supreme Court (non-partisan)

New Hampshire

2014: Governor: 2 year term
U.S. Senate: Class 2, 2014, Class 1, 2018.
U.S. House 2.
State Senate: 24, 4 year term (24 in 2008).
State House: 400.

New Jersey

2013: Governor, Lt. Gov.
U.S. Senate: Class 2, 2014, Class 3, 2016.
U.S. House 13.
2009: State Senate: 24, 4 year term.
State House: 80.

New Mexico

2014: Governor, Lt. Gov., (elected on a ticket with governor but nominated separately), Sec of State, Attorney General, Treasurer, Auditor, Comm. of Public Lands all 4-year term.
U.S. Senate: Class 2, 2014, Class 1, 2018.
U.S. House 3.
State Senate: 42, (4 year term).
State House: 70.

New York

2014: Governor: Lt. Gov. (elected on a ticket with governor), Attorney General, Comptroller, all 4-year term.
U.S. Senate: Class 3, 2016, Class 1, 2018.
U.S. House 29.
State Senate: 62, 4 year term (all elected in Presidential years).
State House: 150.

North Carolina

2012: Governor: Lt. Gov., Sec of State, Attorney General, Treasurer, Auditor, Commissioner of Agriculture, Commissioner of Insurance, Commissioner of Labor, Supt. of Public Instruction all 4-year term
U.S. Senate: Class 2, 2014, Class 3, 2016.
U.S. House 13.
State Senate: 50, 4 year term .
State House: 120.
Judicial elections Supreme Court, Court of Appeals (non-partisan).

North Dakota

2014: Sec of State, Attorney General, Commissioner of Agriculture, Tax Commissioner, all 4-year term.
Public Service Commissioners three for 6-year term, elected in 2008, 2010, and 2012.
2012: Governor, Lt. Gov.(elected on a ticket with governor), Treasurer, Auditor, Commissioner of Insurance, Supt. of Public Instruction, all 4-year term.
U.S. Senate: Class 3, 2016, Class 1, 2018. U.S. House: 1.
State Senate: 47, 4 year term (23 in Presidential election years, 24 in gubernatorial election years).
State House: 94, 4 year term, (46 in 2008).
Judicial elections Supreme Court (non-partisan)

Ohio

2014: Governor, Lt. Gov. (elected on ticket with governor), Sec of State, Attorney General, Treasurer, Auditor,
U.S. Senate: Class 3, 2016, Class 1, 2012.
U.S. House 18.
State Senate: 33, 4 year term (Half elected every two years).
State House: 99.
Judicial elections Supreme Court, Court of Appeals (partisan)

Oklahoma

2014: Governor, Lt. Gov., Attorney General, Treasurer, Auditor and Inspector, Commissioner of Labor, Insurance Commissioner, Supt. of Public Instruction all 4-year term.
Corporation Commissioner 1: 6 year term, Next Election: 2010
Corporation Commissioner 2: 6 year term, Next Election: 2012
Corporation Commissioner 3: 6 year term, Next Election: 2008
U.S. Senate: Class 2, 2014, Class 3, 2016.
U.S. House 5.
State Senate: 48, 4 year term (Half elected every two years).
State House: 101.

Oregon

2014: Governor: 4 Commissioner of Labor and Industries, Superintendent of Public Instruction all 4-year term.
2012: Sec of State, Attorney General, Treasurer, all 4 year term.
U.S. Senate: Class 2, 2014, Class 3, 2016.
U.S. House: 5.
State Senate: 30, 4 year term (Half elected every two years).
State House: 60.
Judicial elections Supreme Court, Court of Appeals (non-partisan)

Pennsylvania

2014: Governor: Lt. Gov. (elected on ticket with governor but nominated separately).
2016: Attorney General, Auditor General and Treasurer, all 4-year term.
U.S. Senate: Class 3, 2016, Class 1, 2018.
U.S. House 19
State Senate: 50, 4 year term (Half elected every two years).
State House: 203.

Rhode Island

2014: Governor, Lt. Gov., Sec of State, Attorney General, General Treasurer all 4 year term.
U.S. Senate: Class 2, 2014, Class 1, 2018.
U.S. House 2.
State Senate: 38, 4 year term (All in Presidential election years).
State House: 75.

South Carolina

2014: Governor, Lt. Gov, Sec of State, Attorney General, Treasurer, Comptroller General, Adjutant General, Commissioner of Agriculture, Supt. of Education all 4-year term
U.S. Senate: Class 2, 2014, Class 3, 2016.
U.S. House: 6.
State Senate: 46, 4 year term (All in Presidential election years).
State House: 124.

South Dakota

2014: Governor, Lt. Gov.(elected on a ticket with the Governor) Sec of State, Attorney General, Treasurer, Auditor, Commissioner of School and Public Lands all 4-year term.
U.S. Senate: Class 2, 2008, Class 3, 2016.
U.S. House 1.
State Senate: 35, 4 year term (All in Presidential election years).
State House: 70.

Tennessee

2014: Governor
U.S. Senate: Class 2, 2014, Class 1, 2018.
U.S. House 9.
State Senate: 33, 4 year term (Half elected every two years).
State House: 99.

Texas

2014: Governor Lt. Gov, Attorney General, Comptroller of Public Accounts, Commissioner of Agriculture, Commissioner of General Land Office, each 4 year term.

Railroad Commissioner 1: 6 year term, Next Election: 2010
 Railroad Commissioner 2: 6 year term, Next Election: 2012
 Railroad Commissioner 3: 6 year term, Next Election: 2008
 U.S. Senate: Class 2, 2014, Class 1, 2018. U.S. House 32.
 State Senate: 31, 4 year term (15 in Presidential election years,
 16 in gubernatorial election years).
 State House: 150.
 Judicial elections Supreme Court, Court of Appeals, Court of
 Criminal Appeals (partisan)

Utah

2012: Governor: Lt. Gov. (elected on a ticket with Governor),
 Attorney General, Treasurer, Auditor, all 4-year term
 U.S. Senate: Class 3, 2016, Class 1, 2018.
 U.S. House 3.
 State Senate: 29, 4 year term (14 in Presidential election years,
 15 in gubernatorial election years).
 State House: 75.

Vermont

2014: Governor, Lt. Gov. Sec of State, Attorney General,
 Treasurer, Auditor of Accounts all 2- year term.
 U.S. Senate: Class 3, 2016, Class 1, 2018.
 U.S. House 1.
 State Senate: 30, 2 year term.
 State House: 150, 2 year term.

Virginia

2009: Governor, Lt. Gov., Attorney General, all 4-year term.
 U.S. Senate: Class 2, 2014, Class 1, 2018.
 U.S. House 11.
 2009: State Senate: 20, 4 year term.
 State House: 40, 2 year term.

Washington

2012: Governor, Lt. Gov. Sec of State, Attorney General,
 Treasurer, Auditor, Commissioner of Public Lands, Insurance
 Commissioner, Superintendent of Public Instruction, all 4 year
 term.
 U.S. Senate: Class 3, 2016, Class 1, 2018.
 U.S. House 9.
 State Senate: 49, 4 year term (25 in 2008) State House: 98.
 Judicial elections Supreme Court, Court of Appeals
 (non-partisan).

West Virginia

2012: Governor, Sec of State, Attorney General, Treasurer,
 Auditor, Commissioner of Agriculture, all 4-year term.
 U.S. Senate: Class 2, 2014, Class 1, 2018.
 U.S. House 3.
 State Senate: 35, 4 year term (17 in Presidential election years,
 16 elected in gubernatorial election years).
 State House: 100.
 Judicial elections Supreme Court, Court of Appeals (partisan).

Wisconsin

2014: Governor, Lt. Gov. (Elected on a ticket with- but
 nominated separately from- the Governor), Sec of State,
 Attorney General, Treasurer, all 4-year term.
 2009: Superintendent of Public Instruction 4-year term.
 U.S. Senate: Class 3, 2016, Class 1, 2018.
 U.S. House 8.
 State Senate: 33, 4 year term (16 in Presidential election years,
 17 in gubernatorial election years).
 State House: 99.
 Judicial elections Supreme Court, Court of Appeals
 (non-partisan)

Wyoming

2014: Governor, Sec of State, Treasurer, Auditor,

Superintendent of Public Instruction all 4-year term.
 U.S. Senate: Class 2, 2014, Class 1, 2012, U.S. House: 1.
 State Senate: 30, 4 year term (Half elected every two years).
 State House: 60.

V. Exemption from Charitable Solicitation Registration

The following statutes provide that a contribution to the Trust is
 exempt from law requiring registration of charitable
 organizations for solicitations:

- Alabama .. Ala.Code 1975 § 13A-9-7[5]0 re definition of
 contribution; see also 13A-9-7[3] re definition
 of civil rights organization and Ala.Code 1975
 § 13A-9-71(f)(4) re civil rights organizations
 and (f)(5) re civic associations membership
 and Ala.Code 1975 § 13A-9-71(f)(4) and (5)
 express exemption from registration
- Alaska... .. *No exemption for registration*
- Arizona ... A.R.S. § 44-6551[4] re definition of
 contribution
- Arkansas *No exemption for registration*
- California *No exemption for registration*
- Colorado .. C.R.S. § 6-16-103(5) re definition of
 contribution
- Connecticut C.G.S. § 21a-190a(5) re definition of
 contribution
- Delaware .. No registration requirements but professional
 solicitor must maintain records, etc. See 6
 Del.C. § 2594.
- D.C. D.C. Code § 44-1703(c)(2) exempting
 members
- Florida ... F.S. § 496.404(5) re definition of contribution
- Georgia ... Ga. Code Ann., § 43-17-9(a)(3)] except that
 paid solicitors cannot be retained
- Hawaii ... HRS § 467B-1 re definition of contribution
- Idaho No registration required. Idaho Charitable
 Solicitation Act, I.C. § 48-1201, imposes
 penalties only.
- Illinois 225 ILCS 460/3(b)(2) exempting members
- Indiana ... IC 23-7-8-1 § 1 re definition of contribution
- Iowa No registration required *but professional
 solicitor must be registered.* I.C. § 13C.2
- Kansas ... K.S. 17-1762(b) re definition of contribution
- Kentucky.. KRS § 367.650(3)(a) re definition of
 contribution
- Louisiana.. *No exemption for registration, see e.g.,
 LSA-R.S. 51:1901.1*
- Maine ... 9 M.R.S. § 5003(4)(A) re definition of
 contribution
- Maryland.. MD Code, Business Regulation, § 6-
 102(c)(3)(iii)-(iv)
- Massachusetts M.G.L. 68 § 18 re definition of contribution
 and see also M.G.L. 68 § 20 re exemption
- Michigan .. M.C.L. 400.272 § 2 (d) re definition of
 contribution and see also M.C.L. 400.283 §
 13(c) re a charitable organization that does not
 invite general public to be members and
 confines solicitation only among members
- Minnesota . M.S. § 309.515(d) re definition of contribution
- Mississippi. Miss. Code § 79-11-501(d) re definition of
 contribution
- Missouri .. V.A.M.S. 407.456[2](3) re definition of
 membership
- Montana .. No registration required. Montana
 Telemarketing Registration and Fraud
 Prevention Act, MC 30-14-1401 imposes own
 requirements
- Nebraska .. No registration requirements. Nebraska
 Uniform Prudent Management of Institutional
 Funds Act, Neb.Rev.St. § 58-611 et al.,

	imposes other requirements
Nevada . . .	No registration requirements. N.R.S. 598.1305 imposes penalties
New Hampshire	N.H. Rev. Stat. § 7:21.IV re definition of contribution
New Jersey.	N.J.S.. 45:17A-20 re definition of contribution
New Mexico	N. M. S. 1978, § 57-22-3C re definition of contribution
New York .	McKinney's Exec. Law § 171-a[2] re definition of contribution
North Carolina	N.C.G.S. § 131F-2(5) re definition of contribution
North Dakota	NDCC, 50-22-01[4] re definition of contribution
Ohio	R.C. § 1716.01(E) re definition of contribution
Oklahoma .	18 Okl.St. § 552.4[3] <i>except that paid solicitors cannot be retained</i>
Oregon. . . .	<i>No exemption for registration</i>
Pennsylvania	10 P.S. § 162.3[8] re definition of contribution
Rhode Island	Gen. Laws 1956, § 5-53.1-1(3) re definition of contribution
South Carolina	S.C. Code 1976 § 33-56-20(1)(b)(4) re definition of contribution
South Dakota	SDCL § 37-30-1(4) re definition of contribution (chapter applicable to telephone solicitations, SDCL § 37-27 et al Charitable and Professional Solicitation of Contributions repealed by SL 1984, ch 260, §§ 1 to 4)
Tennessee .	T. C. § 48-101-501(3) re definition of contribution
Texas	No applicable law
Utah	U.C.A. 1953 § 13-22-8(1)(a) exempting members <i>except that paid solicitors cannot be retained</i>
Vermont . .	No registration requirements, but solicitor must enter into written contract which must satisfy various requirements, see 9 V.S. § 2472, and file notice with Atty. Gen. 9 V.S. § 2473
Virginia . . .	VA Code § 57-48[8] re definition of contribution and see also § 57-60[4] exempting members with restriction solicitation is by members
Washington	West's RCW 19.09.020(10) & (13) re definition of general public and membership
West Virginia	W. Va. Code, § 29-19-6(4) re definition of contribution
Wisconsin	W.S. 440.41(5) re definition of contribution
Wyoming. . .	No applicable law, but Uniform Prudent Management of Institutional Funds Act, W.S.1977 § 17-7-301 imposes requirements

Part III. Trust Finances

Explanatory Comment

This Part concerns the financial components of administering the Trust by the Trustees, and its investment advisors as well as delineating conduit fund-raising from exempt fund raising to sustain the administration of the Trust.

Rule 5 Accounts and Depository Matters.

- (a) **Scope.** — The scope of this Rule governs the types of accounts the Trustee will maintain and processes relating to the Trust acting as conduit for earmarked contributions to Qualified and Current Beneficiaries.
- (b) **Trust Administration Account.** — The Trustee shall establish and maintain the Trust Administration Account which are designated funds for administrative purposes and which are deductible under IRC § 170 pursuant to IRC § 4947(a)(1) and which are not deposits of contributions or expenditures for campaign finance reporting purposes under the Major Purpose rule under *Buckley v. Valeo*, 424 U.S. 1, 44 (1976) and otherwise not attributable to any FECA or State Laws, which shall consist of but not be limited to the following expenses in the following priority:
- (1) Trustee's compensation. 20 Pa.C.S. § 7780.6(a)(8).
 - (2) Legal fees for General Counsel, local counsel, Treasurer, and independent auditor. 20 Pa.C.S. § 7780.6(a)(8).
 - (3) Out-of-pocket expenses and commissions to all ancillary trustees and agents designated by the Trustee to accept commissions. 20 Pa.C.S. § 7780.6(a)(8).
 - (4) General & administrative expenses regularly incurred in the administration of the Trust such as furniture and furnishings, telephone and Internet charges, and stationary. 20 Pa.C.S. § 7780.6(a)(8).
 - (5) Leases for office space. 20 Pa.C.S. § 7780.6(a)(11),
 - (6) Insurance. 20 Pa.C.S. § 7780.6(a)(6).
 - (7) Code writing expenses for the development and maintenance of the Trust Property including collection and validation of HAVA data expenses which shall not include appending voter identification data necessary to enable the voter to exercise his beneficiary rights. 20 Pa.C.S. § 7779.
 - (8) All other non-PASO developmental and maintenance expenses and professional services incurred by the Trustee to deliver the Trust Property and ancillary services under IOP Rule 7. 20 Pa.C.S. § 7779.
 - (9) Acquisition of additional technology for the Trust Property. 20 Pa.C.S. § 7779, 7780.6(a)(9).
- (10) Taxes, assessments, etc. 20 Pa.C.S. § 7780.6(a)(8).
- (11) All other service support activities as defined under Paragraph 28 of FAS No. 117 re *Financial Statements for Non-Profit Organizations*.
- (12) All other expenses related to all other powers which a trustee may exercise pursuant to 20 Pa.C.S. § 7780.5, including such illustrative powers enumerated under 20 Pa.C.S. § 7780.6(a) not already enumerated under this Rule.
- (c) **Trust Endowment Account.** — The Trustee shall establish and maintain the Trust Endowment Account shall consist of such contributions necessary for the Trust to be undiminished and self-perpetual, as such is defined under FAS No. 117 *Financial Statements for Nonprofit Organizations* (June 1993) which shall be reserves for all expenses under subsection (b) of this Rule for a period of not less than ten (10) years based on the evaluation by the Trustee.
- (d) **Escrow Accounts.** — The Trustee shall establish and maintain campaign contribution and Levin Fund contribution escrow Accounts for Qualified Beneficiaries all which shall applied by the Trustee as governed under FECA as amended by Title I of the Bipartisan Campaign Finance Reform Act of 2002 ("BCRA"), P.L. 107-155, pursuant to regulations promulgated under 11 CFR Part 300. The Escrow Accounts are merely established by the Trustee solely in the capacity as a conduit. 2 U.S.C. § 441a(a)(8) and to which the Trustee exercises no control or discretion as to the designated political party or candidate campaign committee for receipt of Levin Fund contributions.
- (e) **Processing Campaign and Levin Fund Contributions.** —
- (1) *Compliance.* The Trustee shall process all earmarked contributions raised as Non-Federal campaign or Levin Fund contributions as a conduit as governed by 2 U.S.C. 441a(a)(8); 2 U.S.C. 432(b)(1) and (2); 11 CFR 110.6 and 102.8 and *see also* AO 2006-30 (*ActBlue*) and AO 2003-23 (*WE LEAD*) to assure compliance with FECA. 11 CFR 300.31(f) and *cf.* 11 CFR 300.31(g). All monies raised shall be electronically transferred to the appropriate Non-Federal campaign or Levin Fund account as rapidly as possible. For purposes of compliance with 11 CFR 300.32(a), the Solicitation & Acceptance for Levin Fund contributions must be made by the appropriate county,

district, ward or local committee.

- (2) *Incomplete Donor Information.* If the contributor omits any information required by FECA or the contributor's state campaign finance laws, then the contribution will be treated as a charitable contribution to the Trust and deposited in the Trust Endowment Account.
- (3) *Earmarked to non-registered Beneficiary.* If the contributor earmarks a contribution to a Qualified or Current Beneficiary not yet registered with the Trustee and has provided the certifications as required under IOP Rule 4(i)(1)-(3), the Qualified or Current Beneficiary shall have fifteen (15) business days from notice to the Beneficiary of receipt of the earmarked contribution by the Trustee to provide such certification otherwise the earmarked contribution will be treated as a charitable contribution to the Trust and deposited in the Trust Endowment Account.
- (4) *Escrow regarding Levin Fund contributions.* If the total sum of earmarked Levin Fund contributions exceed \$5,000, the Trustee will escrow such funds until the Qualified Beneficiary registers with the FEC as required under 11 CFR § 100.5(c) (\$5,000 registration threshold for political party committees). Once registration is completed, the Trustee shall release the escrow unless the current election cycle expired.
- (5) *Escrow regarding Candidates' National Conference Calls.* If the total sum of any National Conference Call by a candidate does not meet the minimal requirements under IOP Rule 7, the Trustee will escrow such funds until the candidate through an additional National Conference Call, reaches the minimal requirements, *provided that*, such call is scheduled and undertaken within thirty days. Otherwise, the candidate forfeits the escrow to the Trust Endowment Account and the contributor will be notified that his contribution to the campaign is converted to a tax-deductible contribution to the Trust.
- (6) *Ineligible contributions.* If the contribution is ineligible to be campaign or Levin Fund contributions or which exceed the statutory limit imposed by law then the contribution will be treated as a charitable contribution to the Trust and deposited in the Trust Endowment Account.
- (7) *Distribution.* The earmarked contribution will be distributed to the Beneficiary after such expenses, escrows, deposits and surcharges due the Trust are satisfied as required under IOP Rule 4.

(f) Disclosure Statement. —

- (1) Notice of the provisions of this Rule regarding campaign contributions shall appear in Plain English by linkage on the We the People Today.org™ website when soliciting Federal, non-Federal or Levin Fund contributions as follows:

Important Legal Information

Under Federal and/or state law, only the respective state, county or local Democratic and Republican committee ("committee") can solicit Federal, Levin Fund or non-Federal campaign contributions that it expends or disburses. At no time does the Trustee exercise any discretion over the designation of any contribution. You and the committee to whom you are contributing are solely responsible for reporting Your contribution and compliance with all applicable Federal, state and local law governing campaign contributions and You and the committee agree to indemnify and hold harmless the Trustee. If the committee does not comply with the Trust Agreement and the Trustee's rules and regulations within fifteen (15) days of the date You earmark contribution for the committee verifying its' compliance with applicable Federal and/or state law, Your contribution will be reallocated to the Trust's Endowment Account in furtherance of the Trust's charitable purpose of protection Your First Amendment rights under the committee's name. All earmarked contributions to committees are subject to the Trustee's administrative expenses, bank and credit card processing fees, and any surcharges levied against the Party under the Trust Agreement prior to remitting the contribution to the committee.

Your Privacy Rights

Your credit card information will be used only for this transaction through the Trust's secure online payment system and is immediately discarded after the transaction is verified. The Trustee does not retain nor transmit credit card information to any committee.

Federal and/or state law require the committee to report Your name, address, occupation, and employer to the Federal Election Commission, state campaign finance authority, or other regulatory authorities. If You do not provide all such information, Your contribution cannot be remitted to the committee and will be reallocated to the Trust's Endowment Account.

Contributions Not Tax Deductible

Your campaign contributions are not tax deductible for Federal income tax purposes.

You may review the Trustee's Internal Operating Procedures ("IOP") Rule 7 for a complete description of the rules and regulations distribution of your contribution at www.LincolnCharitableTrust.org

- (2) Notice of the provisions of this Rule regarding campaign contributions shall appear in Plain English on the donor page as follows:

By clicking on the "Donate Now" button above you confirm that the following statements are true and accurate:

1. I am a United States citizen or a permanent resident alien.

2. This contribution is not made from the general treasury funds of a corporation, labor organization or national bank.
3. This contribution is not made from the treasury of an entity or person who is a federal contractor.
4. This contribution is not made from the funds of a political action committee.
5. This contribution is not made from the funds of an individual registered as a federal lobbyist or a foreign agent, or an entity that is a federally registered lobbying firm or foreign agent.
6. I am not a minor under the age of 16.
7. The funds I am donating are not being provided to me by another person or entity for the purpose of making this contribution.
8. The contribution I am making is not the result of direction or instruction by any political party committee or by the Trustee of the Lincoln Charitable Trust.

(g) Fund Raising Ratios. — At no time shall the Trustee undertake any fund raising effort or campaign in which the expenses directly related to the conduct of the fund raising effort or campaign not exceed one-third (33%) of the total gross revenue therein generated; *provided that*, for the purposes of this subsection only, the term “gross revenue” shall mean all receipts generated before provisions for loss due to disqualified contributors, NSF checks and other charge-backs.

Explanatory Comment

I. Scope.

This Rule provides for the various accounts which the Trustee will require. The Trust Endowment Accounts are to assure future payment of the expenses to be charged to the Trust Administration Account, and are permanent term endowments, which means the principal cannot be normally invaded. Escrow and Levin Fund Contribution Accounts are accounts solely for conduit fund raising purposes as provided under these Rules. The portions relating to Treasurer inspections of campaign contributions are modifications of the applicable provisions of regulations promulgated by the Federal Election Commission found at 11 CFR 103.3 re Deposit of receipts and disbursements. All Rules within this Part are to incorporate the general rule that all beneficiaries are tenants-in-common (TIC) each possessing undivided fractional interests in the Trust Property and all assets of the Trust.

II. FAS 116.

The accounts are set up not only to comply with FECA, but primarily for accounting purposes under FAS 136, *Transfers of Assets to a Not-for-Profit Organization or Charitable Trust That Raises or Holds Contributions for Others* (June 1999). The following paragraphs within FAS 116 are instantly applicable:

3. Paragraphs 8–16 of this Statement apply to transactions in which an entity—the donor—makes a contribution by transferring assets to a not-for-profit organization or charitable trust—the recipient organization—that accepts the assets from the donor and agrees to use those assets on behalf of or transfer those assets, the return on investment of those assets, or both to an unaffiliated 1 entity—the beneficiary—that is specified by the donor. 2

* * *

Intermediary

8. Although in general usage the term intermediary encompasses a broad range of situations in which an organization acts between two or more other parties, use of the term in paragraph 4 of Statement 116 is more narrow and

specific. The term is used to refer to situations in which a recipient organization acts as a facilitator for the transfer of assets between a potential donor and a potential beneficiary (donee) but is neither an agent or trustee nor a donee and donor as contemplated by Statement 116. 4 If an intermediary receives cash or other financial assets, 5 it shall recognize its liability to the specified beneficiary concurrent with its recognition of the assets received from the donor. Both the liability and the assets shall be measured at the fair value of the assets received. If an intermediary receives nonfinancial assets, it is permitted, but not required, to recognize its liability and those assets provided that the intermediary reports consistently from period to period and discloses its accounting policy.

Trustee

9. A recipient organization acts as a trustee if it has a duty to hold and manage assets for the benefit of a specified beneficiary in accordance with a charitable trust agreement. This Statement does not establish standards for a trustee’s reporting of assets held on behalf of a specified beneficiary, but paragraphs 15 and 16 establish standards for the beneficiary’s reporting of its rights to trust assets—its beneficial interest in the charitable trust.

* * *

Financially Interrelated Organizations

12. A recipient organization that is directed by a donor to distribute the transferred assets, the return on investment of those assets, or both to a specified unaffiliated beneficiary acts as a donee, rather than an agent, trustee, or intermediary, if the donor explicitly grants the recipient organization variance power—that is, the unilateral power to redirect the use of the transferred assets to another beneficiary. In that situation, explicitly grants means that the recipient organization’s unilateral power to redirect the use of the assets is explicitly referred to in the instrument transferring the assets, and unilateral power means that the recipient organization can override the donor’s instructions without approval from the donor, specified beneficiary, or any other interested party. Financially Interrelated Organizations

13. The recipient organization and the specified beneficiary are financially interrelated organizations if the relationship between them has both of the following characteristics:

a. One organization has the ability to influence the operating and financial decisions of the other. The ability to exercise that influence may be demonstrated in several ways:

(1) The organizations are affiliates.

(2) One organization has considerable representation on the governing board of the other organization.

(3) The charter or bylaws of one organization limit its activities to those that are beneficial to the other organization.

(4) An agreement between the organizations allows one organization to actively participate in policymaking processes of the other, such as setting organizational priorities, budgets, and management compensation.

b. One organization has an ongoing economic interest in the net assets of the other. If the specified beneficiary has an ongoing economic interest in the net assets of the recipient organization, the beneficiary’s rights to the assets held by the recipient organization are residual rights; that is, the value of those rights increases or decreases as a result of the investment, fundraising, operating, and other activities of the recipient organization.

Alternatively, but less common, a recipient organization may have an ongoing economic interest in the net assets of the specified beneficiary. If so, the recipient organization's rights are residual rights, and their value changes as a result of the operations of the beneficiary.

14. If a recipient organization and a specified beneficiary are financially interrelated organizations and the recipient organization is not a trustee, the recipient organization shall recognize a contribution received when it receives assets (financial or nonfinancial) from the donor that are specified for the beneficiary. For example, a foundation that exists to raise, hold, and invest assets for the specified beneficiary or for a group of affiliates of which the specified

Beneficiary

15. A specified beneficiary shall recognize its rights to the assets (financial or nonfinancial) held by a recipient organization as an asset unless the recipient organization is explicitly granted variance power. Those rights are either an interest in the net assets of the recipient organization, a beneficial interest, or a receivable. If the beneficiary and the recipient organization are financially interrelated organizations, the beneficiary shall recognize its interest in the net assets of the recipient organization and adjust that interest for its share of the change in net assets of the recipient organization. 6 If the beneficiary has an unconditional right to receive all or a portion of the specified cash flows from a charitable trust or other identifiable pool of assets, the beneficiary shall recognize that beneficial interest, measuring and subsequently remeasuring it at fair value, using a valuation technique such as the present value of the estimated expected future cash flows. In all other cases, a beneficiary shall recognize its rights to the assets held by a recipient organization as a receivable and contribution revenue in accordance with the provisions of Statement 116 for unconditional promises to give.

16. If the donor explicitly grants a recipient organization variance power, the specified unaffiliated beneficiary shall not recognize its potential for future distributions from the assets held by the recipient organization.

Transfers of Assets That Are Not Contributions

17. A transfer of assets to a recipient organization is not a contribution and shall be accounted for as an asset by the resource provider and as a liability by the recipient organization if one or more of the following conditions is present:

- a. The transfer is subject to the resource provider's unilateral right to redirect the use of the assets to another beneficiary.
- b. The transfer is accompanied by the resource provider's conditional promise to give or is otherwise revocable or repayable.
- c. The resource provider controls the recipient organization and specifies an unaffiliated beneficiary.
- d. The resource provider specifies itself or its affiliate as the beneficiary and the transfer is not an equity transaction (paragraph 18).

18. A transfer of assets to a recipient organization is an equity transaction if all of the following conditions are present:

- a. The resource provider specifies itself or its affiliate as the beneficiary.
- b. The resource provider and the recipient organization are financially interrelated organizations.

c. Neither the resource provider nor its affiliate expects payment of the transferred assets, although payment of investment return on the transferred assets may be expected. If a resource provider specifies itself as beneficiary, it shall report an equity transaction as an interest in the net assets of the recipient organization (or as an increase in a previously recognized interest). I

f a resource provider specifies an affiliate as beneficiary, the resource provider shall report an equity transaction as a separate line in its statement of activities, and the affiliate named as beneficiary shall report an interest in the net assets of the recipient organization. A recipient organization shall report an equity transaction as a separate line item in its statement of activities.

Disclosures

19. If a not-for-profit organization transfers assets to a recipient organization and specifies itself or its affiliate as the beneficiary, it shall disclose the following information for each period for which a statement of financial position is presented:

- a. The identity of the recipient organization to which the transfer was made
- b. Whether variance power was granted to the recipient organization and, if so, a description of the terms of the variance power
- c. The terms under which amounts will be distributed to the resource provider or its affiliate
- d. The aggregate amount recognized in the statement of financial position for those transfers and whether that amount is recorded as an interest in the net assets of the recipient organization or as another asset (for example, as a beneficial interest in assets held by others or a refundable advance).

20. If a not-for-profit organization discloses in its financial statements a ratio of fundraising expenses to amounts raised, it also shall disclose how it computes that ratio.

Under Appendix A, Illustrative Guidance, the FASB provides the following specific example relative FAS 116.

Example 4—Assets Transferred from an Individual to a Bank to Establish a Charitable Trust for the Benefit of a Not-for-Profit Organization

35. Individual transfers assets to National Bank to establish an irrevocable charitable trust for the sole benefit of Museum. National Bank will serve as trustee. Individual sets forth in the trust agreement the policies that direct the economic activities of the trust. The trust term is five years. Each year, the income received on the investments of the trust will be distributed to Museum. At the end of year 5, the corpus of the trust (original assets and net appreciation on those assets) will be paid to Museum.

36. This Statement does not establish standards for the trustee, National Bank (paragraph 9). Because Museum is unable to influence the operating or financial decisions of the trustee, Museum and National Bank are not financially interrelated organizations (paragraph 13(a)). Therefore, Museum would recognize its asset (a beneficial interest in the trust) and contribution revenue that increases temporarily restricted net assets (paragraph 15). Museum would measure its beneficial interest at fair value, using a valuation technique such as the present value of the estimated expected future cash receipts from the trust's assets (paragraph 15). That value generally can be measured by the fair value of the assets contributed to the trust.

III. Conduit Fund Raising.

FECA imposes contribution and expenditure limits on Federal funds, i.e., funds spent on Federal election activity, 2 U.S.C. § 431(20), 11 CFR 100.24; and on Levin funds, which is a category of funds raised by state, district and local party committees for certain Federal election activities, and generally are sources ordinarily prohibited by federal law but permitted by state law. 11 CFR 300.2(h). FECA does not reach non-Federal funds spent on non-Federal election activity, 2 U.S.C. § 453(a), which instantly are governed by the Pennsylvania Election Code. Notwithstanding per the Commission's own admission that while FECA does not "specifically address contributions earmarked to political committees that are not authorized committees of candidates. See 2 U.S.C. § 441a(a)(8) and 2 U.S.C. § 432(b); 11 CFR 110.6[.] "the Commission "has held that this omission does not bar such earmarking, but that it would be subject to other regulations concerning the receipt of contributions by any person on behalf of a political committee." AO AO-2003-23 (*WE LEAD*) quoting e.g., Advisory Opinions 1983-18 and 1981-57, subject to the requirements under 11 CFR 102.8(b) which imposes time constraints relative to contribution amounts. According to the Commission, contributions earmarked through a conduit or intermediary are contributions from the original contributor. 2 U.S.C. § 441a(a)(8); 11 CFR 110.6(a). AO 2006-30 (*ActBlue*) and see also AO 2003-23 (*WE LEAD*).

The Trust is required by the Commission upon receiving a contribution in excess of \$50 to forward the contribution as well as the contributor's name, address and receipt date, to the treasurer no later than 10 days after receipt. 2 U.S.C. § 432(b)(2)(B); 11 CFR 102.8(b)(2). If the contribution exceeds \$200, the contributor's employer and occupation must also be forwarded. 11 CFR 102.8(b)(2). Contributions of \$50 or under to unauthorized committees must be forwarded within thirty days (with no information forwarding requirement). 2 U.S.C. § 432(b)(2)(A); 11 CFR 102.8(b)(1). AO 2006-30 (*ActBlue*), AO 2003-23 (*WE LEAD*). The Commission determined these earmarking requirements apply to contributions forwarded to the national political party, the sole difference being contributions limits are different. AO 2003-23 (*WE LEAD*).

Under FECA, the Trustee may in good faith rely on the Commission's Advisory Opinions, instantly being AO 2007-30 (*ActBlue*) and AO 2003-23 (*WE LEAD*), so long as the specific transaction or activity is indistinguishable in all its material aspects from the transaction or activity with respect to which such advisory opinion, being AO 2007-30 (*ActBlue*) and 2003-23 (*WE LEAD*), is rendered. 2 U.S.C. § 437f(c)(1)(B). This is all the more relevant in light of the fact that under FECA, the Commission may issue advisory opinions on which requestors may rely upon in good faith to be immune from sanctions. 2 U.S.C. § 437f(a)-(b), 11 CFR 112.4.

IV. Levin Fund Campaign Contributions

"Levin funds are a type of non-Federal funds raised only by State, district and local political party committees. They are limited to donations of \$10,000 per source per calendar year and generally may be solicited from sources otherwise prohibited by the FECA [but] must be lawful under the laws of the State in which the committee is organized." 2 U.S.C. § 441(b)(2)(B). March 4, 2005 letter of Sen. John McCain (R-AZ), Sen. Russell Fiengold (D-WI), Rep. Christopher Shays (R-CT) and Rep. Marty Meehan (D-MA) to FEC General Counsel re FEC's NPRM 2005-2, 70 Fed.Reg. 5385 (Feb. 2, 2005)

Levin funds are a category of campaign contributions exempt from the Bipartisan Campaign Reform Act (BCRA) or "McCain-Feingold" limitations amending the Federal Election Campaign Act (FECA). 2 U.S.C. § 441(b)(2). While an individual is

limited to only \$2,400 per Federal candidate per election, he or she may contribute up to \$10,000 in Levin fund contributions to a party committee within any calendar year. 11 CFR 300.31(d) The primary prohibition is that such Levin fund contributions are not used for broadcast ads or any Federal Election activity (campaigning) which refers to clearly identified Federal candidate. 11 CFR 300.32(c).

What is equally important is, for Levin fund contributions only, state and local party committees are not "affiliated," i.e., counted as one entity. 11 CFR 301.31(d)(3). Couple this lack of affiliation with the \$5,000 threshold which evokes FECA reporting requirements, 11 CFR 100.5(c), as compared to the \$1,000 threshold for national and state political committees. 11 CFR 100.5(a).

Levin fund contributions are used for Election Day activities for distribution of sample ballots at the polls, GOTV expenses, and what the PA Election Code calls "poll watcher compensation," 25 P.S. § 2687(d), commonly known as "street money."

V. Levin Fund Contribution Limits

Limits	Per Committee	Per State Total	
Alabama	\$10,000	67	\$670,000
Alaska	\$5,000	27	\$135,000
Arizona	\$10,000	15	\$150,000
Arkansas	\$10,000	75	\$750,000
California	\$10,000	58	\$580,000
Colorado	\$3,175	64	\$203,200
Connecticut	\$1,000*	8	\$8,000*
Delaware	\$10,000	3	\$30,000
D.C.	\$10,000	1	\$10,000
Florida	\$10,000	67	\$670,000
Georgia	\$10,000	159	\$1,590,000
Hawaii	\$10,000	5	\$50,000
Idaho	\$10,000	44	\$440,000
Illinois	\$10,000	102	\$1,020,000
Indiana	\$10,000	92	\$920,000
Iowa	\$10,000	99	\$990,000
Kansas	\$10,000*	105	\$1,050,000
Kentucky	\$1,000	102	\$1,020,000
Louisiana	\$10,000	64	\$640,000
Maine	\$10,000	16	\$160,000
Maryland	\$1,000	23 (1)	\$24,000
Massachusetts	\$5,000	14	\$70,000
Michigan	\$10,000	83	\$830,000
Minnesota	\$10,000	87	\$870,000
Mississippi	\$10,000	82	\$820,000
Missouri	\$10,000	114	\$1,140,000
Montana	\$10,000	56	\$560,000
Nebraska	\$10,000	93	\$930,000
Nevada	\$10,000	16	\$160,000
New Hampshire	\$5,000	10	\$50,000
New Jersey	\$7,200*	21	\$151,200
New Mexico	\$10,000	33	\$330,000
New York	\$10,000	62	\$620,000
North Carolina	\$10,000	100	\$1,000,000
North Dakota	\$10,000	53	\$530,000
Ohio	\$10,000	88	\$880,000
Oklahoma	\$5,000	77	\$385,000
Oregon	\$10,000	36	\$360,000
Pennsylvania	\$10,000	67	\$670,000
Rhode Island	\$10,000	5	\$50,000
South Carolina	\$3,500	46	\$161,000
South Dakota	\$3,000	66	\$198,000
Tennessee	\$10,000	95	\$950,000
Texas	\$10,000	254	\$2,540,000
Utah	\$10,000	29	\$290,000
Vermont	\$2,000	14	\$28,000
Virginia	\$5,000	95 (39)	\$670,000

Washington	\$10,000	39.	\$390,000
West Virginia	\$1,000	55.	\$55,000
Wisconsin	\$10,000	72.	\$720,000
Wyoming.	\$10,000	23.	\$230,000

Total eligible Levin Fund Campaign contributions for 2019-2020 election cycle is \$12,908,200.

* Connecticut \$5,000 to state committee, \$1,000 to town committee limit. Kansas \$15,000 to state committee. \$5,000 to all others. New Jersey, \$25,000/year to legislative leadership committee, state political party committee. \$37,000/year to county party committee. \$7,200/year to municipal party committee

VI. Distributions and Set Offs.

Because there is no statutory or regulatory language specifically addressing conduit fund raising, guidance is derived solely from the previously mentioned FEC Advisory Opinions. In AO 2006-30, the Commission noted that “recipient candidates and party committees pay all credit card transaction fees.” *Id.* at p. 2. This distinction was previously noted in prior Advisory Opinions. See e.g. AO 1980-46 (National Conservative PAC). The Trustee will not only deduct the out-of-pocket expenses incurred in the raising and transferring of campaign contributions, but also those licensing fees to which the candidate or prospective candidate is indebted to the Trustee. Such is a condition of the Trustee acting as an intermediary on behalf of the candidate.

VII. Fund Raising & Fund Raising Ratios.

As stated in the Standards of Excellence Institute, *Standards of Excellence*, which is representative of multiple standards governing nonprofit organizations:

Charitable fundraising provides an important source of financial support for the work of most charitable nonprofit organizations. An organization's fundraising program shall be maintained on a foundation of truthfulness and responsible stewardship. Its fundraising policies should be consistent with its mission, compatible with its organizational capacity and respectful of the interests of donors and prospective donors.”

Under Art. VII.A.(1) it is provided that “A charitable nonprofit's fundraising costs should be reasonable over time. On average, over a five year period, a nonprofit should realize revenue from fundraising and other development activities that are at least three times the amount spent on conducting them. Organizations whose fundraising ratio is less than 3:1 should demonstrate that they are making steady progress toward achieving this goal or should be able to justify why a 3:1 ratio is not appropriate for the individual organization.”

The Better Business Bureau also requires approximately the same standard, although worded differently. The BBB *Wise Giving Alliance Standards for Charity Accountability* (2003) states in pertinent part:

Standard No. 8: Spend at least 65% of its total expenses on program activities.

Standard No. 9: Spend no more than 35% of related contributions on fund raising. Related contributions include donations, legacies, and other gifts received as a result of fund raising efforts.

Standard No. 10: Avoid accumulating funds that could be used for current program activities. To meet this standard, the charity's unrestricted net assets available for use should not be more than three times the size of the past year's expenses or three times the size of the current year's budget, whichever is higher.

An organization that does not meet Standards 8, 9 and/or 10 may provide evidence to demonstrate that its use of funds is

reasonable. The higher fund raising and administrative costs of a newly created organization, donor restrictions on the use of funds, exceptional bequests, a stigma associated with a cause and environmental or political events beyond an organization's control are among factors which may result in expenditures that are reasonable although they do not meet the financial measures cited in these standards.

GuideStar, the major nonprofit watchdog organization, provides “that ratios are helpful: When you are comparing organizations of similar size and age, that are located in the same area or similar locales, and that have similar missions and programs [and w]hen you are tracking an individual nonprofit's progress over time.” [GuideStar uses a different Fund Raising Ratio, which is fund raising expense divided by two expenses]. And see also Ranjani Krishnan, Michelle H. Yetman, Robert J. Yetman, *Financial Disclosure Management by Nonprofit Organizations*, SSRN (Mich. State Univ., July 19, 2002).

VIII. FAS No. 117

FAS No. 117 re *Financial Statements for Non-Profit Organizations* makes a significant distinction between types of costs which FECA or most (but not all) state campaign finance laws fail to make, which is there is a difference between program service costs and supporting activities costs. The Pennsylvania General Counsel's October 3, 2008 guidance implicitly recognizes the difference although through a different result, by analysis whether or not the cost is for the purposes of influencing an election.

27. Program services are the activities that result in goods and services being distributed to beneficiaries, customers, or members that fulfill the purposes or mission for which the organization exists. Those services are the major purpose for and the major output of the organization and often relate to several major programs. For example, a large university may have programs for student instruction, research, and patient care, among others. Similarly, a health and welfare organization may have programs for health or family services, research, disaster relief, and public education, among others

28. Supporting activities are all activities of a not-for-profit organization other than program services. Generally, they include management and general, fund-raising, and membership-development activities. Management and general activities include oversight, business management, general recordkeeping, budgeting, financing, and related administrative activities, and all management and administration except for direct conduct of program services or fund-raising activities. Fund-raising activities include publicizing and conducting fund-raising campaigns; maintaining donor mailing lists; conducting special fund-raising events; preparing and distributing fund-raising manuals, instructions, and other materials; and conducting other activities involved with soliciting contributions from individuals, foundations, government agencies, and others. Membership-development activities include soliciting for prospective members and membership dues, membership relations, and similar activities.

IX. Definition of Endowment Fund

FAS No. 117 re *Financial Statements for Non-Profit Organizations* provides a definition of Endowment fund a matter highly relevant to the Trustee while not necessarily relevant to political parties or campaigns:

Endowment fund

An established fund of cash, securities, or other assets to provide income for the maintenance of a not-for-profit organization. The use of the assets of the fund may be

permanently restricted, temporarily restricted, or unrestricted. Endowment funds generally are established by donor-restricted gifts and bequests to provide a permanent endowment, which is to provide a permanent source of income, or a term endowment, which is to provide income for a specified period. The principal of a permanent endowment must be maintained permanently — not used up, expended, or otherwise exhausted — and is classified as permanently restricted net assets. The principal of a term endowment must be maintained for a specified term and is classified as temporarily restricted net assets. An organization's governing board may earmark a portion of its unrestricted net assets as a board-designated endowment (sometimes called funds functioning as endowment or quasi-endowment funds) to be invested to provide income.

Unlike political parties or campaign committees, a charitable trust is provided perpetual life, and will require such source of revenue to assure it remains undiminished and self-perpetual. The Trustee has a statutory duty to protect the Trust, which necessarily implies the Trust be permanently funded. The Trust Endowment Accounts are to assure such permanent funding, which under these Rules, must always be replenished from incoming revenue if the principal is required to be invaded.

Rule 6 Attribution and Distribution.

(a) Scope. — The scope of this Rule concerns the pro rata attribution of Property Contributions to the Trust when FECA and/or those State Laws require attribution.

(b) Distribution of Attribution. — As set forth under general rule expressed by the FEC in 11 CFR 106.1, attribution is to be determined by the proportion of funds received (which for purposes of the Trust, is access to and use of assets, i.e., an in-kind contribution) by each beneficiary as compared to the total receipt by all beneficiaries, which shall be by a Ballot Composition Method as follows:

- (1) All contributions which are deposited in the Trust Administration Account shall be attributed in a percentage equal to the total number of elected public and party officeholders who must stand for election within the current two-year FEA period.
- (2) All contributions which are deposited in the Trust Endowment Accounts established shall be attributed in a percentage equal to the total number of all elected public and party officeholders who must stand for election within the a ten year period.
- (3) All contributions which are deposited in all remaining accounts shall be attributed according to law.

(c) Number of Federal and non-Federal Candidates. — The Trustee will employ the Ballot Composition Method for purposes of this Rule, by using the latest available numbers as provided by the *Census of Governments* published by the Census Bureau of the U.S. Dept. of Commerce, is as follows per the number of Federal and non-Federal (state and local) elected public officials.

State	Federal	State	Local	Party (D&R)
Alabama	9	436	3,949	8,840
Alaska	3	255	1,674	1,744
Arizona	10	239	3,050	8,440
Arkansas	6	349	8,059	10,772
California	55	226	18,699	87,428
Colorado	9	280	8,325	13,480
Connecticut	7	333	8,814	3,076
Delaware	3	80	1,091	1,748
District of Columbia	0	0	348	568
Florida	27	934	4,654	27,568
Georgia	15	465	6,064	12,652
Hawaii	4	91	92	1,412
Idaho	4	171	4,604	3,796
Illinois	21	623	41,713	46,952
Indiana	11	506	11,118	22,284
Iowa	7	319	16,160	7,864
Kansas	6	343	18,552	15,528

Kentucky	8	565	6,495	13,928
Louisiana	9	629	4,422	16,496
Maine	4	210	6,346	2,404
Maryland	10	356	1,767	7,116
Massachusetts	12	225	21,948	8,708
Michigan	17	652	18,052	20,940
Minnesota	10	623	18,247	16,432
Mississippi	6	296	4,458	6,828
Missouri	11	994	16,287	21,848
Montana	3	201	4,905	3,424
Nebraska	5	201	13,698	6,672
Nevada	5	141	1,077	6,340
New Hampshire	4	430	6,917	968
New Jersey	15	121	8,921	25,132
New Mexico	5	220	1,981	2,736
New York	31	950	24,982	60,612
North Carolina	15	593	5,227	10,996
North Dakota	3	205	15,277	2,428
Ohio	20	231	19,135	45,464
Oklahoma	7	362	8,627	8,608
Oregon	7	290	7,543	5,792
Pennsylvania	21	1,200	29,276	37,056
Rhode Island	4	155	983	2,308
South Carolina	8	195	3,748	8,672
South Dakota	3	155	9,529	1,654
Tennessee	11	321	6,629	3,308
Texas	34	815	28,813	34,216
Utah	5	200	2,511	7,520
Vermont	3	186	8,348	1,108
Virginia	13	143	2,961	9,176
Washington	11	537	7,187	26,656
West Virginia	5	205	2,567	7,908
Wisconsin	10	450	17,379	14,252
Wyoming	3	121	2,621	1,932
Total	535	18,828	493,830	731,284
Total Per Class	535	512,658		731,284
Total Public and Party Officeholders				1,244,477

The party officeholder compilation currently reflects only precinct committee, and not state or national members. The number of state legislators is based on National Conference of State Legislatures, which provides that 5411 state House seats and 1,972 state Senate seats.

(d) Attribution Process. — The contribution shall be presumed, unless otherwise indicated by the donor, to be a donor-restricted contribution for beneficiaries only within the contributor’s state, to which all limitations, restrictions and prohibitions therein such state shall apply.

(e) Restrictive Contributions. — Unless qualified, all contributions shall be accounted as non-restrictive under FAS 116. Funds subject to time restrictions should be classified as temporarily restricted.

(f) Recognition of Assets and Value. — The Trustee

shall advise all beneficiaries in the Annual Report as required by 20 Pa.C.S. § 7780.3(i)(5) of the Trust's assets and market value, if feasible. Upon receipt of the Annual Report therein, each beneficiary shall be solely responsible for the recognition of assets and compliance with all Federal and state tax and campaign finance laws. The market value of the Trust Property shall be a good faith (cash approach) estimate of fair market value.

(g) Distribution to Qualified Beneficiaries. — The Trustee shall distribute each beneficiary's undivided fractional interest and the resulting basis by the number of Qualified Beneficiaries, as set forth below:

State	Counties†	Municipal Units	Precincts	Committee Persons
Alabama	67	451	2,210	4,420
Alaska	27	149	436	872
Arizona	15	87	2,110	4,220
Arkansas	75	75	2,693	5,386
California	58	475	21,857	43,714
Colorado	64	270	3,370	6,740
Connecticut	8	179	769	1,538
Delaware	3	57	437	874
District of Columbia	0	1	142	284
Florida	67	404	6,892	13,784
Georgia	159	531	3,163	6,326
Hawaii	5	0	353	706
Idaho	44	200	949	1,898
Illinois	102	2,722	11,738	23,476
Indiana	92	1,577	5,571	11,142
Iowa	99	948	1,996	3,932
Kansas	105	1,926	3,882	7,764
Kentucky	102	424	3,482	6,964
Louisiana	64	302	4,124	8,248
Maine	16	489	601	1,202
Maryland	23 (1)	157	1,779	3,558
Massachusetts	14	351	2,177	4,354
Michigan	83	1,775	5,235	10,470
Minnesota	87	2,647	4,108	8,216
Mississippi	82	296	1,707	3,414
Missouri	114	1,258	5,462	10,924
Montana	56	129	856	1,712
Nebraska	93	977	1,668	3,336
Nevada	16	19	1,585	3,170
New Hampshire	10	234	242	484
New Jersey	21	566	6,283	12,566
New Mexico	33	101	684	1,368
New York	62	1,545	15,153	30,306
North Carolina	100	541	2,749	5,498
North Dakota	53	1,692	607	1,214
Ohio	88	2,250	11,366	22,732
Oklahoma	77	590	2,152	4,304
Oregon	36	240	1,448	2,896
Pennsylvania (361)	67	2,564	9,264	18,528
Rhode Island	5	39	577	1,154

South Carolina	46	269	2,168	4,336
South Dakota	66	1,248	827	1,654
Tennessee	95	349	2,287	4,574
Texas	254	1,196	8,554	17,108
Utah	29	236	1,880	3,760
Vermont	14	284	277	554
Virginia	95 (39)	229	2,294	4,588
Washington	39	279	6,664	13,328
West Virginia	55	234	1,977	3,954
Wisconsin	72	1,850	3,563	7,126
Wyoming	23	98	483	966
Total	3,099	35,933	182,851	365,642
Total of both parties				731,284

Numbers in parenthesis under counties are “independent cities” regarding Maryland and Virginia, cities and towns for Massachusetts.

Explanatory Comment

I. Scope.

The scope of this Rule concerns attribution of donor-restricted contributions upon receipt by the Trustee. The Rule also addresses the classifications of contributions and how valued which are derived from the AICPA Accounting Practices Committee (APC) Manual *Report on Classification of Net Assets by Community Foundations*.

II. Attribution.

Attribution for campaign contribution reporting purposes is not the same as Distribution for Internal Revenue purposes. Attribution is solely to acknowledge what portion of a contributor's share is to be credited, for campaign finance reporting purposes, to which political party committee, since under FECA, there is the requirement to distinguish between Federal and non-Federal election activity. Distribution, on the other hand, is that portion of the beneficiary's interest in the Trust Property which the beneficiary is required to report for Federal income tax purposes.

III. State Campaign Finance Laws.

The following table from Fiegenbaum, *Campaign Finance Laws 2002*, Wash.D.C.: FEC (2002) summarizes the campaign finance laws per state, with “None” being no campaign contribution limits imposed, “aggregate” being a single campaign contribution limit imposed statewide regardless of the number of committees, “per committee” means the campaign contribution limit is imposed per committee, and “exempted” means that the contribution of the Trust Property is exempted by state law notwithstanding the campaign contribution limits, with indication of which counties whose basis apparently exceeds the state's campaign contribution limits. The publication date necessarily implies caution as to the information's reliability.

Alabama	None	
Alaska	\$5,000	Aggregate
(all 27 counties)		
Arizona	None	ARS § 16-905(E)
Arkansas	None	
California	\$25,000	Per Committee

The following counties are subdivided into their respective Assembly or Supervisory Districts per CA Election Code § 7200: Alameda (5 Assembly districts), Los Angeles (26 Assembly districts), Orange (9 Assembly districts), Riverside (5 Supervisory districts), Sacramento (5 Supervisory

districts), San Bernadino (5 Supervisory districts), San Diego (17 Assembly districts) and Santa Clara (5 Supervisory districts).

Colorado \$3,175 Aggregate
\$2,650 limit to state party committee (all 64 counties)

Connecticut None
Delaware \$20,000
D.C. \$5,000
Florida None
Georgia None
Hawaii \$50,000
Idaho None
Illinois None
Indiana None
Iowa None
Kansas \$5,000 Per Committee

The following counties are divided into their respective incorporated cities and townships: Johnson (29) and Sedgwick (47).

Kentucky \$2,500 Aggregate
(all 102 counties)
Louisiana \$100,000 4-yr aggregate
Maine None
Maryland \$367,950 \$1 per 2 voters 4yr
Massachusetts \$5,000 Per Committee

The following counties are subdivided into their respective towns or cities: Bristol (20), Essex (34), Hampden (25), Middlesex (54), Norfolk (28), Plymouth (25), Suffolk (22 wards within City of Boston) and Worcester (25).

Michigan None
Minnesota None
Mississippi None
Missouri None
Montana None
Nebraska None
Nevada None
New Hampshire None
New Jersey \$37,000 Per Committee
New Mexico None
New York \$76,500 Per Committee
North Carolina None
North Dakota None
Ohio \$5,000 Per Committee

The basis of the following ten counties, Butler, Cuyahoga, Franklin, Hamilton, Lorain, Lucas, Mahoning, Montgomery, Stark and Summit, remain above the state's per committee contribution limit.

Oklahoma \$5,000 Aggregate
(all 77 counties)
Oregon None
Pennsylvania None
Rhode Island \$35,000
South Carolina \$3,500 Per Committee

The following counties are subdivided into their respective precinct party clubs per CLSC §7-90-30: Anderson (76), Charleston (182), Greenville (139), Horry (118), Lexington (88), Richland (125), Spartanburg, (92) and York (63).

South Dakota None
Tennessee None
Texas None
Utah None
Vermont \$2,000 Per Committee

Crittenden county is subdivided into its respective 17 towns.
Virginia None
Washington Exempted
West Virginia \$1,000 Per Committee

The following counties are subdivided into their respective magisterial districts per W.V.C. §3-1-9(c): Berkeley (6), Cabell (5), Harrison (10), Jefferson (5), Kanawha (4), Marion (4), Mercer (3), Monongalia (3), Putman (3), Raleigh (3) and

Wood (3). Currently, Kanawha County's basis is \$22 above the campaign contribution limit.

Wisconsin \$6,000 Aggregate
(all 72 counties)
Wyoming None

The Trustee is still required to assure that each beneficiary's undivided fractional interest does not rise to the level that it violates either FECA or state campaign finance laws, which for relevant states impose campaign contribution ceilings as follows:

Alaska

The state has a \$5,000 aggregate party total campaign contribution limit. AS § 15.13.070(b). See *State v. Alaska ACLU*, 978 P.2d 597, 625-626 (Alaska 1999) cert. denied, 120 S.Ct. 1156 (2000). Under Alaska law, the value of an in-kind service is the amount which the donor received for the kind of services contributed. 2 Alaska Adm. Code, (AAC) Public Offices Commission, § 50.250, which provides

(c) The provision of goods or services without charge, or at a charge that is less than the normal charge for the goods and services in the market, is a contribution unless a lower rate is extended to all campaigns. If goods or services are provided at less than the normal charge in the market, the amount of the nonmonetary contribution is the difference between the normal charge for the goods or services at the time of the contribution and the amount charged.

California

Campaign contribution limit of \$25,000 is per committee.

Colorado

This state has a \$25,000 aggregate party total campaign contribution limit. CRS § 1-45.105.3(4). In-kind contributions are defined by FMV. CRS § 1-45.103(6)(c)(III).

Kansas

Campaign contribution limit of \$5,000 is by set per committee.

Kentucky

This state has a \$2,500 aggregate party total campaign contribution limit. KRS 121.015(11). KRS 121.015(6)(11)b) and (c) defines an in-kind contribution but does not employ FMV. However, such is derived from 32 KAR 2:170 § 1(1), (4) which does employ FMV as the basis to value an in-kind contribution. *Kentucky Registry of Election Finance v. Louisville Bar Association*, 579 S.W.2d 622 (Ky.App. 1978) would suggest an alternative situation. See also AO 96-005 (Kentucky Right to Life Coalition).

Louisiana

This state has a \$100,000 aggregate party total campaign contribution within a four-year period commencing January 1, 1991. However, such contribution limit does not include the national political committee. LRSA 18:1505.2K(1). However, under LRSA 18:1483(14)(a)(iii) "Any state central committee, parish executive committee, and any other committee of any political party which receives contributions or makes expenditures in such amount during such period shall be considered a "political committee" for the purposes of this Chapter." Accordingly, campaign contribution limits are by set per committee, which in Louisiana, means the basis distribution is well under the state's \$100,000 per four-year limit per the 64 parish (county) committee campaign contribution.

Maryland

Maryland has a contribution cap equal to \$1 per every two voters in a four year cycle. Currently, the Trustee believe the basis distribution is well within the Maryland limit.

Massachusetts

Campaign contribution limit of \$5,000 is per committee.

New York

Campaign contribution limits are by set per committee, EL § 14-114(10), which in New York, means the basis distribution is well under the state's \$76,500 limit per each of the 62 county committees. See EL 14-100(2)-(3) re definition of "party" and "constituted" committee. This state does employ the term Fair Market Value. EL § 14-114(c)(2).

Rhode Island

The state's campaign contribution limits of \$25,000 per party committee, R.I.G.L. § 17-25-10.1(a)(1), provides an exemption for "organizational and party-building activities" of an additional \$10,000 per party committee. R.I.G.L. § 17-25-10-1(a)(2).

South Carolina

Under CLSC § 8-13-1316(B), party expenditures for partisan multi-candidate promotion for four or more candidates, where each candidate receives substantially equal treatment, both in terms of time or length discussed and prominence in presentation, are not included in South Carolina's campaign \$3,500 contribution limit per committee.

Washington

Contribution of the Trust Property is exempted from the state's otherwise restrictive campaign contribution limits. RCW § 42.17.640(15)(a)-(b) which provides: "The following contributions are exempt from the contribution limits of this section:

- (a) An expenditure or contribution earmarked for voter registration, for absentee ballot information, for precinct caucuses, for get-out-the-vote campaigns, for precinct judges or inspectors, for sample ballots, or for ballot counting, all without promotion of or political advertising for individual candidates;
- (b) An expenditure by a political committee for its own internal organization or fund raising without direct association with individual candidates."

Wisconsin

This state has a \$6,000 aggregate party total contribution in a two-year period ending December 31 of an even-numbered year. WSA § 11.26(8)(c). Wisconsin does not employ FMV but instead defines in-kind contributions with the term "replacement costs." WSA § 11.01(6)(a)(2). ("*** a contribution means *** A transfer of personalty, including but not limited to campaign materials and supplies, valued at the replacement cost at the time of transfer"). Wisconsin authority specifically holds that contributions may be in-kind, as well as in cash, and campaign organizations are required to report the receipt of in-kind contributions. *Wisconsin Coalition for Voter Participation, Inc. v. State Elections Board*, 231 Wis. 2d 670, 605 N.W.2d 654 (Ct. App. 1999).

West Virginia

Campaign contribution limits of \$1,000 are per committee.

IV. Fair Market Value.

Distribution of the Trust Property, accordingly, must be in accord with the campaign contribution limits imposed by various states which impose campaign contribution limits. Additionally, most these states also impose Fair Market Value ("FMV") as the criteria to determine the value of in-kind contributions. Wisconsin imposes the replacement cost as value of an in-kind contribution.

Fair Market Value is normally defined as found by the U.S. Supreme Court, as the price at which the property would change hands between a willing buyer and a willing seller, neither being

under any compulsion to buy or to sell and both having reasonable knowledge of relevant facts. *United States v. Cartwright*, 411 U. S. 546 (1973) (quoting from U.S. Treasury regulations relating to Federal estate taxes, at 26 CFR 20.2031-1(b)). And see also New York State Society of CPA (NYSSCPA) *CPA Journal*, (May 2000) the valuation of property for estates and trusts.

Many of the state campaign statutes require that in-kind contributions be valued by their FMV, or Fair Market Value. The FEC likewise provides a similar definition under 11 CFR 100.52(d)(1)-(2) as follows

(d)(1) For purposes of this section, the term anything of value includes all in-kind contributions. Unless specifically exempted under 11 CFR part 100, subpart C, the provision of any goods or services without charge or at a charge that is less than the usual and normal charge for such goods or services is a contribution. Examples of such goods or services include, but are not limited to: *** membership lists, and mailing lists. If goods or services are provided at less than the usual and normal charge, the amount of the in-kind contribution is the difference between the usual and normal charge for the goods or services at the time of the contribution and the amount charged the political committee. (2) For purposes of paragraph (d)(1) of this section, usual and normal charge for goods means the price of those goods in the market from which they ordinarily would have been purchased at the time of the contribution; *** [67 FR 50585, Aug. 5, 2002, as amended at 67 FR 78680, Dec. 26, 2002]. And see also AO 2004-36 (In re Risely).

All legal authorities hold that in as Fair market value is the price that the property, services or assets would sell for in an open market, but if no reliable price quotes are available, then the fair market value is based on a good-faith estimate of the value. The NYSSCPA also notes that: "In determining fair market value, must there be a number of similar transactions to reach a consensus of value? The fact that the government pays \$400 for a hammer does not mean all hammers in a hardware store are worth \$400." This remains a critical distinction in light of the current expenditure patterns by campaigns, particularly for consultants.

The Trustee believe that guidance is found in FAS No. 157 "Fair Value Measurements" (Sept. 2006), at Paragraph 18, which provides that

The cost approach is based on the amount that currently would be required to replace the service capacity of an asset (often referred to as current replacement cost). From the perspective of a market participant (seller), the price that would be received for the asset is determined based on the cost to a market participant (buyer) to acquire or construct a substitute asset of comparable utility, adjusted for obsolescence. Obsolescence encompasses *** functional (technological) obsolescence, and economic (external) obsolescence and is broader than depreciation for financial reporting purposes (an allocation of historical cost) or tax purposes (based on specified service lives).

According to the FASB, there are only two other kinds of valuation, being the market approach and the income approach, neither be instantly applicable. The obsolescence factor would be set by the 36 month amortization allowance under IRC § 167(f) or alternatively the longer period under IRC § 197.

V. Distribution of Beneficiary Basis.

Under FAS No. 136 *Transfers of Assets to a Not-for-Profit Organization or Charitable Trust That Raises or Holds Contributions for Others* governs the Trustee per the following Paragraphs 9 and 15:

9. A recipient organization acts as a trustee if it has a duty to hold and manage assets for the benefit of a specified beneficiary in accordance with a charitable trust agreement. This Statement does not establish standards for a trustee's reporting of assets held on behalf of a specified beneficiary, but paragraphs 15 and 16 establish standards for the beneficiary's reporting of its rights to trust assets—its beneficial interest in the charitable trust.

* * *

15. A specified beneficiary shall recognize its rights to the assets (financial or nonfinancial) held by a recipient organization as an asset unless the recipient organization is explicitly granted variance power. Those rights are either an interest in the net assets of the recipient organization, a beneficial interest, or a receivable. If the beneficiary and the recipient organization are financially interrelated organizations, the beneficiary shall recognize its interest in the net assets of the recipient organization and adjust that interest for its share of the change in net assets of the recipient organization. If the beneficiary has an unconditional right to receive all or a portion of the specified cash flows from a charitable trust or other identifiable pool of assets, the beneficiary shall recognize that beneficial interest, measuring and subsequently remeasuring it at fair value, using a valuation technique such as the present value of the estimated expected future cash flows. * * *

The above merely reiterates what the Internal Revenue Code, 26 U.S.C. § 643(e) (IRC § 643(e)) as follows in pertinent part:

(e) Treatment of property distributed in kind

(1) Basis of beneficiary

The basis of any property received by a beneficiary in a distribution from an estate or trust shall be—

(A) the adjusted basis of such property in the hands of the estate or trust immediately before the distribution, adjusted for

(B) any gain or loss recognized to the estate or trust on the distribution.

(2) Amount of distribution

In the case of any distribution of property (other than cash), the amount taken into account under sections 661 (a)(2) and 662 (a)(2) shall be the lesser of—

(A) the basis of such property in the hands of the beneficiary (as determined under paragraph (1)), or

(B) the fair market value of such prop-erty.

(3) Election to recognize gain

(A) In general

In the case of any distribution of property (other than cash) to which an election under this paragraph applies—

(i) paragraph (2) shall not apply,

(ii) gain or loss shall be recognized by the estate or trust in the same manner as if such property had been sold to the distributee at its fair market value, and

(iii) the amount taken into account under sections 661 (a)(2) and 662 (a)(2) shall be the fair market value of such property.

(B) Election

Any election under this paragraph shall apply to all distributions made by the estate or trust during a taxable year and shall be made on the return of such estate or trust for such taxable year.

Any such election, once made, may be revoked only with the consent of the Secretary.

(4) Exception for distributions described in section 663 (a)

This subsection shall not apply to any distribution described in section 663 (a).

Accordingly for both accounting and campaign finance reporting purposes, the Trustee sets a date certain, being 15 days prior to the general or municipal election in November, which coincides with the last pre-election campaign finance reporting period required under the PA Election Code. 25 P.S. § 3246(d). All beneficiaries will be required to report receipt of the in-kind contribution on the date certain, regardless whether or not they utilize the Trust Property. A standardized distribution date assures uniformity in reporting contributions and expenditures.

The basis constitutes the pro rata distribution of the Primary Trust Administration Account to administer the Trust Property and the Trust Asset Accounts

VI. Definition of Undivided Fractional Interests.

Each beneficiary and all elected members therein, possess equitable (as different from legal) interests as tenants in common, *DePlaine's Estate*, 185 Pa. 332, 334-335, 39 A.947, 948 (1898), as trust involves separation of legal and equitable ownership; beneficiary being the equitable owner. *Internal Revenue Service v. Orr*, 180 F.3d 656, 660 (5th Cir. 1999). Each beneficiary's interest is as tenant in common or "TIC" or more formally known as undivided fractional interests, which defines each person's interest share in a jointly or commonly owned property.

As contributions to the Trust are class gifts, a gift of an aggregate sum to a body of persons uncertain in number all to take in equal proportions, the share of each is dependent for its amount upon the ultimate number, *In re Estate of Clarke*, 460 Pa. 41, 331 A.2d 408, 410 (1975); such creates a tenancy in common, Bogert (2d ed. Rev.) § 181; each owning separate fractional shares in undivided property, *United States v. Craft*, 535 U.S. 274, 279-280 (2002); *In re Engel's Estate*, 413 Pa. 475, 478, 198 A.2d 505, 507 (1964): "It is well established that tenants in common of personal property, like tenants in common of real estate, own and possess in equal shares an undivided interest in the whole property." The actual value of the Trust Property is an undivided fractional interest determined as a annual basis increase (or decrease), 26 U.S.C. § 643(e); FAS No. 136, *Transfers of Assets to a Non-for-Profit Organization or Charitable Trust that Raises or Holds Contributions for Others*, by good faith or cash approach estimate of fair market value ("FMV"). FAS No. 157 *Fair Value Measurements*.

Rule 7 Supplementing Trust Assets.

IOP Rule 7 Sub-Table of Contents

- (a) Scope
- Part I. Anti-Fat Cat Days™**
- (b) Campaign
- (c) Referral Fees
- (d) General Party Contributions
- Part II. National Conference Calls™**
- (e) We the People TODAY™ National Conference Calls™
- (f) Registering Call Participants
- (g) Programming
- (h) Agenda/ Public Policy Opinion Survey
- (i) Time Line and Program Format
- (j) Additional Information and Services
- Part III. Questions and Answers**
- (k) Anti-Fat Days
- (l) National Conference Calls
- Part IV. General Information.**
- (m) Trustee Warranty
- (n) Co-Beneficiary Fiduciary Duty
- Part V. Additional Charitable Activities.**
- (o) Trust Support of other charities
- Explanatory Comment

- (a) **Scope.** — The scope of this Rule describes discharge of the Trustee’s authority pursuant to 20 Pa.C.S. § 7780.6(a)(9) to receive additions to the assets of the Trust, including the Anti-Fat Cat Days campaign and the We the People TODAY™ National Conference Calls.™

Part I. Anti-Fat Cat Days™.

- (b) **Campaign.** — The Trust shall provide the Anti-Fat Cat Days™ campaign through the Trust’s authority under applicable Federal and state campaign finance laws governing earmark campaign contributions, as follows:
- (1) *Description.* Anti-Fat Cat Days™ campaign is an online fund-raising campaign for Qualified Beneficiaries who are state, county and municipal, ward or other district (“local”) party committees.
 - (2) *Purpose.* The purpose of the Anti-Fat Cat Days™ campaign is to raise non-Federal and Levin Fund campaign contributions for Qualified Beneficiaries by providing resources which the Qualified Beneficiaries, most notably county and local party committees cannot afford for themselves, i.e. merchant account services and accounting otherwise required under BCRA to obtain and utilize Levin Fund contributions.
 - (3) *Benefits.* Each Qualified Beneficiary will have its own donor landing page on the Trust’s website with full merchant account services, subject only to the out-of-pocket expenses under IOP Rule 4(h).
 - (4) *Availability.* The Anti-Fat Cat Days™ campaign and all templates for Anti-Fat Cat Days™ are available to all Qualified

Beneficiaries once registered pursuant to IOP Rule 4(d)-(e). The national Anti-Fat Cat Days™ campaign will solicit on behalf of all Qualified Beneficiaries not withstanding pendency of registration under IOP Rule 4(d)-(e), said monies to be held in escrow under IOP Rule 5(e)(3) for fifteen days before defaulting to the Trust Endowment Account on behalf of the unregistered Qualified Beneficiary.

(c) Referral Fees. —

- (1) *State Party Committee Referral Commission.* Each state party committee will be entitled to a three percent commission as authorized by Pennsylvania trust law until December 31, 2013 on all contributions made to each county and local party committee within the state, if it certifies to the Trustee that:
 - (A) It has emailed to and recommend that each member of the State Party Committee to participate in Anti-Fat Cats;
 - (B) It has emailed to and recommended that each donor on its House List to participate in Anti-Fat Cats; and
 - (C) Otherwise completes registration with the Trustee as required under IOP Rule 4.
- (2) *County Party Committee Referral Commission.* Each county party committee will be entitled to a three percent commission as authorized by Pennsylvania trust law until December 31, 2013 on all contributions made to each local party committee within the county, if it certifies to the Trustee that:
 - (A) It has emailed to and recommend that each member of the County Party Committee to participate in Anti-Fat Cats;
 - (B) It has emailed to and recommended that each donor on its House List to participate in Anti-Fat Cats; and
 - (C) Otherwise completes registration with the Trustee as required under IOP Rule 4.

(d) General Party Contributions. —

- (1) *Distribution of General Party Contributions.* Contributions earmarked to a specific committee but not claimed as required pursuant to IOP Rule 4(h) in addition to all other contributions not earmarked to a committee but designated solely as part of the campaign, will be considered as earmarked contributions to the party at large (“general party contributions”) and will be distributed by the Trustee as follows:
 - (A) To Qualified Beneficiaries by order of registration (seniority) within the respective party, not to exceed \$2.50 per

registered voter within the county (and if to a district committee in lieu of a county committee, said sum to be divided equally between the district and county which one half of the county committee's share to be distributed among all other district committees within the county); and any balance thereafter remaining shall be distributed as set forth below;

- (B) To county and district party committees who are registered under IOP Rule 4(h) who have less than 15% registration of all registered voters within the county or district by order of registration (seniority) to be distributed by state in order of the state's proportional share of total contributions, if not under subsection (i) above.

Part II. National Conference Calls™.

(e) **We the People TODAY™ National Conference Calls™.** — The Trust shall provide We the People TODAY™ National Conference Call™ (the "Call" or "Calls") for Qualified Beneficiaries and Current Beneficiaries, including Current Organizational Beneficiaries, as an ancillary service to the Trust Property, under the designation of either a Democratic or Republican National Conference Call, or specifically under the designation of the Current Organizational Beneficiary.

(f) **Registering Call Participants.** —

- (1) *Participants.* Any Beneficiary (voter) is entitled to participate in as many Calls as desired, for an annual \$40.00 registration fee. Only those Calls hosted by Current Organizational Beneficiaries whose membership is limited to Public Officials (such as Attorneys General), judges, attorneys, police and firefighters, are not open to all Beneficiaries.
- (2) *Consent.* Registration shall constitute consent to receive the Call under applicable Federal and state law.
- (3) *Invitation to Potential Registrants.* Each Qualified, Current and Current Organizational Beneficiary shall be solely responsible for extending invitations to their members, contributors, supporters, donors, etc., for registration to their respective Call by internal email blasts and related online promotion. Email blasts will refer such members, contributors, and supporters to link to the Trust's We the People TODAY™ web portal to register for the Call. The Beneficiary's house list remains solely the Beneficiary's private property. It will usually require ten email

blasts to reach all members, contributors, supporters, etc.

- (4) *Invitation in Compliance with Trust's Charitable Purpose.*
 - (A) The email blast inviting members, contributors, or supporters to register for the Call shall simultaneously ask the recipient to invite five additional guests to join the Call.
 - (B) The email blast shall indicate that the recipient upon registration, will be entitled to participate in the formulation of the Agenda by first selecting Policy Issue Questions to be discussed during the call; and by offering Options to the Policy Issue Questions.
- (5) *Minimal Number of Participants.* The Calls will be provided at no charge to the Qualified Beneficiary, Current Beneficiary or Current Organizational Beneficiary if the Minimal Number of Participants register. If the Minimal Number of Participants are not registered for each Call, the Trustee, as provided under IOP Rule 5(f), deducts the pro rata expense from each contributions raised by each party as required by the Trust Agreement at ¶ 8(C).

(g) **Programming.** —

- (1) *Charitable Purpose.* Each Call is intended to fulfill the Trust's charitable purpose of providing the opportunity for Peer to Peer Dialogue™ to develop consensus on major policy issues facing each party and its elected members. The Call is not to be used for the conduct of normal legislative, political or campaign business.
- (2) *Moderators.* Each Call shall be hosted by a Moderator. Moderators are limited only to the following:
 - (A) The Speaker, President Pro Tempore, House or Senate Floor Leader, or his designee, limited to a chairman or ranking minority member of a standing or special committee.
 - (B) A Chief Executive (President, Governor, County Commissioner, County Executive, Mayor).
 - (C) A National or Party Chairman.
 - (D) A candidate for Federal or statewide office.
 - (E) The Chairman, President or Executive Director of the Current Organizational Beneficiary.
 - (F) The Trustee.
- (3) *Scheduling.* The Call shall be scheduled each Tuesday 9:00 PM Eastern Time on a first-come, first service basis, except state party

- calls may be scheduled at 9:00 PM local time.
- (4) *No PASO*. The Moderator will comply with applicable law and ethics rules. At no time shall any Moderator represent or infer the Trust has, is, or will PASO, but is at all times impartial, as required by law.
 - (5) *Solicitations*. All solicitations for campaign contributions will be made in full accordance with applicable Federal or state campaign finance laws. Any solicitation for campaign contributions must be in conformance with the Trust's charitable purpose in that:
 - (A) The solicitation must ask Participants if the campaign contributions should be allocated toward a specific expense.
 - (B) If any Participant elects to restrict the use to a specific expense, the Qualified Beneficiary must honor the restriction.
 - (C) No portion of the campaign contribution raised by the Call shall be used to pay for any professional political consultant service; or interferes or obstructs with Trust's charitable purpose of providing free political technology to Qualified Beneficiaries (elected precinct committee people).
 - (D) The Solicitation should seek commitments of and/or contributions and volunteer time on a monthly basis (see the Trust's \$48 or 48 Hours campaign as model format).
- (h) Agenda/ Public Policy Opinion Survey. —**
- (1) *Purpose*. Each Call shall follow an Agenda, an advanced public policy opinion survey. The Agenda is divided into multiple Policy Issue Questions by which the Moderator and Participants offer Options which are the subject of discussion during the Call.
 - (2) *Charitable Purpose*. The Agenda is the principal means by which the Call discharges the Trust's charitable purposes. Any act or omission which imposes risk to the Trust's charitable purpose will result in disqualification of the Moderator or Participant from all further participation in the Calls, and if a Qualified or Current Beneficiary, additional sanctions pursuant to the Trust Agreement, ¶ 8(E) and Rule 4.
 - (3) *Minimal Standards Agenda*.
 - (A) No Policy Issue Question shall be hortatory in nature, but must pose a genuine policy issue expressed in such a manner as to incorporate the attributes of openness, balance of interests, due process, and willingness to promote a consensus of opinion among multiple stakeholders, and avoid dominance of a particular point of view, even if all possess affinity for a particular political persuasion.
 - (B) All Options shall be comprehensive material to the Policy Issue Question.
 - (C) Any offensive option will result in the immediate disqualification of the Participant from any further participation in the Calls, and if a Qualified Beneficiary, additional sanctions pursuant to the Trust Agreement, ¶ 8(E) and Rule 4.
- (4) Procedure for Development of the Agenda.**
- (A) The Moderator shall prepare a list of 15 Policy Issue Questions, which the Trustee will email to all participants not less than one week prior to the Call. The email will instruct Participants to select five Policy Issues to be discussed on the Call.
 - (B) The Trustee will send a second email to Participants soliciting up to five options per each Policy Issue Question.
 - (C) Proposed Options shall be reviewed and edited by the Moderator for inclusion into the Agenda.
 - (D) The Trustee will email the Agenda, complete with the Policy Issue Questions and respective Options to all participants on the scheduled day of the Call.
- (i) Time Line and Program Format. —**
- (1) *30 Days Prior*. The Beneficiary reserves the Tuesday or Thursday 9 PM time slot, and designates the Moderator.
 - (2) *30-5 Days Prior*. The Beneficiary sends out one or more email blasts to its house list to invite its members, contributors or supporters to register as Participants in the Call. It will usually require 10 email blasts to assure adequate response.
 - (3) *30-25 Days Prior*. The Moderator develops the List of 15 Policy Issue Questions List for the Agenda.
 - (4) *7 Days Prior*. The Trustee emails the List of 15 Policy Issue Questions to Participants who are to select the top five Policy Issue Questions to be discussed.
 - (5) *4 Days Prior*. The Trustee emails the Top Five Policy Issue Questions selected for the Agenda to Participants who are to propose Options for one or all Policy Issue Questions.
 - (6) *2 Days Prior*. The Moderator reviews and selects the final five Options for each of the Five Policy Issue Questions for the Agenda.
 - (7) *Day of Call*. The Trustee emails the Agenda with the Five Policy Issue Questions and their respective five Options to all Participants. The final Email also provides the access code for

the Call.

- (8) *8:45 PM.* The Engineer, if the Moderator elects, arrives at the Moderator's location to monitor technical processes.
- (9) *9:00 PM.* The Moderator and all Participants commence the Call promptly at 9 PM ET with a one-minute prefatory statement.
- (10) *Agenda.* The Moderator shall then proceed down the Agenda in the order of Policy Issues Questions as numbered.
 - (A) The Moderator may elect to outline the differing points of views or provide a background on the Policy Issue. Nothing shall inhibit the Moderator from expressing his own point of view.
 - (B) The Moderator may select Participant's inquiries on a first-come, first serve; or by title or position; or randomly from different states. The Moderator will be able to identify the Participant's name, city, and title/position.
 - (C) The Moderator shall at an appropriate time, usually 10 minutes, close discussion and instruct Participants to cast their votes.
 - (D) After 30 seconds, the Moderator should proceed to the next Policy Issue Question. It is not necessary for the Moderator to announce the vote results, as such will be readily known to Participants.
- (11) *9:58 PM.* The Moderator concludes the Call.

(j) Additional Information and Services. —

- (1) *Digital Restaurant Coupons.* The Calls will provide, if the Beneficiary so elects (and which is required for Candidate National Conference Calls) digital chain restaurant coupons in denomination of \$25.00 per Participant, subject to availability. The chain restaurants include Appleby's (2,010 stores), Boston Market (500+), Chili's, (1,168) Olive Garden (730+), Outback Steakhouse (900), Ruby Tuesday (846), and TGIF (915). The expense is deducted from the contribution proceeds raised by the Call.
- (2) *Production.* Tele-Town Hall, LLC, Washington, D.C., is the exclusive producer. National Press Club's Broadcast Center is the exclusive television studio services provider.

Part III. Questions and Answers.

(k) Anti-Fat Days. —

- (1) *What happens if I don't register as a beneficiary under IOP Rule 4?* The Trustee can't distribute the earmarked contributions to you. Registration is necessary to certify your compliance with both your state's governing

campaign finance laws as well as Pennsylvania's Uniform Trust Act. The contributions earmarked for you will instead go to other state, county and local party committees who are registered with the Trustee.

- (2) *Why the Referral Commissions?* The referral commissions is to promote comity and cooperation among all state, county and district party committees. Remember under trust law, there is no distinction between, i.e., a state or district party committee - all are equal in the eyes the law.
- (3) *Why should I be concerned about Levin Fund contributions?* Levin Fund contributions are the exception to BCRA (McCain-Feingold)'s contribution caps. With Levin Fund contributions, you can spend and do more electioneering in even-numbered years. Without Levin Fund contributions, you are more restricted and whatever electioneering in an even-numbered year may actually not be legal. You should always consult with your legal counsel regarding any matter concerning BRCA as well as your state campaign finance laws.

(l) National Conference Calls. —

- (1) *Who controls the Agenda?* The Beneficiary controls. The Trustee, required by law to be impartial, has no say in the Agenda set by any Beneficiary so long as all activity undertaken is lawful and the Beneficiary does not jeopardize the Trust's charitable exemption status under the Internal Revenue Code or the Pennsylvania Uniform Trust Act.
- (2) *Can a participant register for more than one We the People TODAY™ National Conference Call™?* Yes, a participant can register for more than one Call.
- (3) *I already have Townhall Conference Calls, what makes this different?* The Trust's charitable purpose is what makes We the People TODAY™ National Conference Calls™ significantly different from normal townhall or constituent conference calls. In a We the People TODAY™ National Conference Call™, the objective is Peer-to-Peer Dialogue™ with the end result of the Call ending in a specific policy-making determination, by which voters throughout the nation are afforded the full opportunity to not only converse with, but to influence "Inside-the-Beltway" Washington.
- (4) *If the Trust is a charitable entity, are contributions tax-deductible?* Yes, registration is a tax-deductible charitable contribution.
- (5) *If the candidate is soliciting a campaign*

contribution, what is tax-deductible? Only the registration is tax-deductible. Campaign contribution are made only during the Call.

- (6) *How does the Moderator assure he is complying with the Trust's charitable purpose?* Questions within the Agenda are not to be dominated by any one point of view. Instead, the Moderator should be promoting a voluntary consensus that incorporates openness, balance of interests, and willingness to promote a consensus of differing opinion among multiple stakeholders.
- (7) *Don't I do that already? Why use We the People TODAY™ National Conference Call™?* If the Beneficiary controls the forum, individuals may not feel (even if there is) the full degree of openness that an independent forum, such as We the People TODAY™ National Conference Calls™ provide. The Calls guarantee a level playing field between the general public and "Inside-the-Beltway" Washington.
- (8) *Why restrictions on campaign contributions generated by a Call?* The Trust's charitable purposes is inapposite to the profiteering by Inside-the-Beltway Washington political consultants, who usurp *elected* party volunteers (the Trust's Qualified Beneficiaries).
- (9) *What benefit is there to fund-raising on a We the People™ National Conference Call™?*
 - (A) First, you open up the opportunity to meet and ask for support from new contributors and supporters.
 - (B) You get to recruit additional volunteers.
 - (C) You are not paying the substantial markup that Inside-the-Beltway Washington political consultants charge for the same services, thus saving yourself hundreds of thousands of dollars which can be used for actual campaigning.
 - (D) You are demonstrating you're not part of the Inside-the-Beltway Washington crowd by soliciting support and contributions from the public throughout America.
- (10) *I already have a Donor Page? Why use the We the People TODAY™ portal for donations?* If you prefer to pay higher fees and expenses, the Call can refer contributors to your Donor Page instead of We the People TODAY™ portal. However, the Qualified Beneficiaries, your party's precinct committee people, will not know who is supporting you. They will only know the supporter and coordinate GOTV efforts, if the supporter comes through the We the People TODAY™ portal.
- (11) *Is it that important for Precinct Committee*

People to Know Who is Supporting Me? Yes, for two reasons. From a practical point of view, you want your party's precinct committee people to be involved in your campaign. From the legal point of view, the Trust's charitable purpose is to protect the First Amendment rights of your precinct committee people to represent who elected them, the very same people who are also your supporters.

- (12) *Why should 501(c)(4)s use We the People™ National Conference Call™ to solicit new members?* According to Professor Jack Treadway, 40% of Democrats and Independent (No-Party) voters are "misaligned," meaning they vote opposite their party registration. In other words, they will split their ticket and vote Republican. 20% of Republicans are misaligned, meaning they will split their ticket and vote Democratic. Most 501(c)(4)s canvass within their comfort zone but fail to attract Misaligned Voters; for example, Republican voters who would support the ACLU, or Democrats who would join the NRA.

Part IV. General Information.

(m) Trustee Warranty. —

- (1) *Limited Warranty.* The Trustee warrants only that the service to accommodate the Anti-Fat Cat Days™ and/or the We the People TODAY™ National Conference Call™ will be made available at the scheduled time for each respective Qualified Beneficiary, Current Beneficiary, or Current Organizational Beneficiary
- (2) *Trustee Not Liable for Disclaimer or Alienation by Beneficiaries.* The Trustee is not liable for any disclaimer, whether such disclaimer is legal or illegal, or alienation of the Trust interests, including the Anti-Fat Cat Days™ campaign and the We the People TODAY™ National Conference Call™, scheduling conflict, or any other failure or breach of fiduciary duty or violation of any applicable Federal or state law, including the Civil Rights Act of 1957 and the Voting Rights Act of 1965, as amended, by any Qualified Beneficiary, Current Beneficiary or Current Organizational Beneficiary to accept or maintain the schedules reservations set aside for them.
- (3) *Trustee Not Liable for Third Party Disruption or Interruption.* The Trustee is not liable for operational, technical or transmission error or omission or failure or any disruption or interruption caused by labor or capacity or material shortage or Act of God.

- (4) *Discontinuance Solely at Trustee's Discretion.* The Anti-Fat Cat Days™ campaign and the We the People TODAY™ National Conference Call™ may be discontinued, suspended or terminated solely at the Trustee's discretion without prior notice to any registrant.
- (5) *Claim for Breach of Fiduciary Duty.* Any claim for breach of fiduciary duty trust shall be brought solely against the Qualified Beneficiary or Current Beneficiary who is a candidate for public or party office under the auspices of a Qualified Beneficiary under the binding arbitration procedures set forth under the Trust Agreement, ¶ 8(e) and these IOP Rules.

(n) Co-Beneficiary Fiduciary Duty. — Each Qualified, Current and Current Organizational Beneficiary, as required under law, owes a fiduciary duty to all other Qualified, Current, and Current Organizational Beneficiaries to:

- (1) Promote the Anti-Fat Cat Days™ campaign and We the People TODAY™ National Conference Call™ to the widest number of potential contributors registrants;
- (2) Utilize the Anti-Fat Cat Days™ campaign and the We the People TODAY™ National Conference Call™ for the charitable purpose for which the Trust was established, by in regard to We the People TODAY™ National Conference Call™ includes avoiding any dominance of one viewpoint and incorporate the attributes of openness, balance of interests, and willingness to promote a consensus of opinion among multiple stakeholders, even if all possess affinity for a particular political persuasion which at all times, moderators should seek a Peer-to-Peer Dialogue™ with the registrant participants; and
- (3) Otherwise not jeopardize the Trust's exempt status under the Internal Revenue Code or its impartiality and loyalty to all beneficiaries under the Pennsylvania Uniform Trust Act or commit any act in violation of applicable Federal or state law, including the Civil Rights Act of 1957.

Part V. Additional Charitable Activities.

(o) Trust Support of other charities. —

- (1) *Compliance with Internal Revenue Code.* To satisfy compliance with IRC § 4942(a) or any other applicable provision of the Internal Revenue Code, the Trustee, in making contributions to other IRC § 501(c)(3) nonprofit charitable entities, shall make such contributions or provide such support if and only when such charitable purposes of the

other 501(c)(3) entity promotes the charitable purposes of the Trust or otherwise brings favorable earned media to the Trust or the Trustee so as to reflect credibly on the Trust and its charitable purposes.

Explanatory Comment

I. Scope.

This Rule governs the Anti-Fat Cat Days campaign and the We the People TODAY™ National Conference Calls™ which in addition to their constituent advocacy and information dissemination objectives, also serves a fund-raising opportunity for Qualified Beneficiaries, Current Beneficiaries and Current Organizational Beneficiaries.

II. Anti-Fat Cat Days™ Campaign.

Reserved.

III. National Conference Call Program.

Each Tuesday and Thursday at 9:00 PM, Eastern Time, the Trustee will provide facilities for a We the People TODAY™ National Conference Call™ to accommodate up to 1.2 million participants, on a first-come, first serve basis for Qualified Beneficiaries, Current Beneficiaries and Current Organizational Beneficiaries. The Qualified Beneficiaries will alternate between the party's respective House, Senate floor leaders, and part chairs, or their designees. We the People TODAY™ National Conference Calls™ reserved by Current and Current Organizational Beneficiaries are moderated by the Current or Current Organizational Beneficiary CEO.

IV. Format.

The Moderator will commence the call promptly at 9:00 PM, Eastern Time. The Moderator will work off the Agenda/ Public Policy Opinion Survey, which provides numbered Policy Issue Questions which participants elected to discuss during the Call. The Agenda's Policy Issue Questions are to be comprehensive and not hortatory, seeking bona fide expression of competing viewpoints. For example, the Congressional Floor Leader or the Current Organizational Beneficiary CEO may comment that the White House is proposing Amendment A to Bill 100, but the party Conference/Caucus is looking at Amendment B, while the Current Organizational Beneficiary proposes Amendment C. The Moderator would ask the participants whether they would recommend Amendment A, B or C.

V. Registration.

Each Qualified, Current, or Current Organizational Beneficiary is solely responsible for generating registration for their specific We the People TODAY™ National Conference Call™, by doing an email blast from their own house list or on their own website to direct participants to WethePeopleTODAY™ website to register. This measure preserves the integrity of a house list belonging to Qualified Current or Current Organizational Beneficiary, as only those members or supports who register for the We the People TODAY™ National Conference Call™ become known to the Trustee. Additionally, Current Organizational Beneficiaries (but not Qualified Beneficiaries or current Beneficiaries) are entitled to share in co-op advertising placed at the beginning of the Conference Call during the wait period up to the scheduled time for the conference call.

VI. Purpose of the Conference Calls

It is critically important to understand that the purpose of the We the People TODAY™ National Conference Calls™ are to engage in meaningful, Peer-to-Peer Dialogue™. Persons or entities in Washington, D.C. are to undertake a bona fide solicitation of public opinion on policy issues, not merely to report on developments from "Inside-the-Beltway" Washington. In this

respect, We the People TODAY™ National Conference Calls™ are not the same as “constituent report” or “Town Hall” telephone conference calls, as in We the People TODAY™ National Conference Calls,™ both the caller and the participants on a level playing field, conversing to each other “peer to peer.”

Rule 8 Investment Policy Statement.

- (a) Scope.** — The scope of this Rule concerns the Trustee’s Investment Policy Statement which shall govern the investment portfolio (the “Portfolio”). This Investment Policy Statement (“IPS”) is intended to serve the following purposes:
- (1) Provide written documentation of expectations regarding the investment of the Trust’s assets.
 - (2) Reflect investment objectives, guidelines and standards that are consistent with the financial objectives of various funds and accounts.
 - (3) Define and assign responsibilities for investment decisions and actions.
 - (4) Establish criteria and benchmarks for the ongoing evaluation of performance results and policy compliance.
 - (5) Establish a framework for review and revision of investment policies as warranted by changing circumstances.
- (b) Context.** — The Portfolio provides funding for current and future operating expenses, a reserve to cover unplanned shortfalls and investment income to support the activities of the Trustee. The Portfolio is managed in three components (“Component Portfolios”) as follows:
- (1) **Daily Portfolio:** The “daily” component (“Daily Portfolio”) represents current operating funds on which draws are made frequently, requiring daily liquidity and preservation of principal. The Daily Portfolio is managed internally by the Trustee or the Trust Treasurer.
 - (2) **Short Term Portfolio:** A short-term component (Short Term Portfolio”) serves as a cushion to provide liquidity for possible shortfalls in the Daily Portfolio. Draws against the short-term portfolio are expected to be infrequent. The Short Term Portfolio is managed by the External Managers as set forth hereunder.
 - (3) **Intermediate Term Portfolio:** The balance of the Portfolio represents the intermediate term component (“Intermediate Term Portfolio”) which serves as a reserve for unplanned shortfalls. In general, the Intermediate Term Portfolio is not expected to experience withdrawals. The Intermediate Term Portfolio is managed by the External Managers.
- (c) Standard of Care.** —
- (1) The standard of prudence to be used by investment officials shall be the “prudent investor rule” and shall be applied in the context of managing the overall portfolio. Investment officers acting in accordance with written procedures and this investment policy

and exercising due diligence shall be relieved of personal responsibility for an individual security's credit risk or market price changes, provided deviations from expectations are reported in a timely fashion and the purchase and sale of securities are carried out in accordance with the terms of this policy. Investments shall be made with judgment and care under the circumstances then prevailing, which persons of prudence, discretion and intelligence exercise in the management of their own affairs, not for speculation, but for investment, considering the probable safety of their capital as well as the probable income.

- (2) The standard of conflicts and interest shall be that all officers and employees involved in the investment process shall refrain from personal business activity that could conflict with the proper execution and management of the investment program, or that could impair their ability to make impartial decisions. All investment officials shall disclose any material interests in financial institutions with which they conduct business. Employees and officers shall refrain from undertaking personal investment transactions with the same individual with whom business is conducted on behalf of the Trustee.

(d) Authority and Responsibility. —

- (1) Responsibility for the operation of the investment program is delegated to the Treasurer as set forth under these Rules and thereafter to the External Managers, all who shall act in accordance with written procedures and internal controls for the operation of the investment program consistent with the IPS. No person may engage in an investment transaction, except as provided under the terms of this policy.
- (2) The duties and responsibilities of the Treasurer relative to this Rule and under this Rule are to:
- (A) Invest the assets of the Daily Portfolio and the Short Term Portfolio in accordance with IPS standards and guidelines.
 - (B) Prepare cash flow projections to determine daily excess cash to invest in short term securities or money market funds for operating needs.
 - (C) Obtain competitive bids and offerings of securities to be purchased or sold.
 - (D) Verify investment activity in the bank accounts.
 - (E) Maintain and balance the Treasury subsidiary investment ledger.
 - (F) Verify broker confirmations to the

subsidiary investment ledger.

- (G) Allocate interest earnings to the accounts participating in the pooled investment program.
 - (H) Report investment activity to the Trustee.
 - (I) Prepare annual reports in compliance with GASB standards.
 - (J) Monitor the performance of the total Portfolio and each separately-managed portfolio against benchmarks established in the IPS and report the same to the Trustee.
 - (K) Maintain a projection of monthly cash inflows and outflows ("Cash Flow Projection") for determining the appropriate minimum and maximum range to maintain in the Daily and Short Term Portfolios.
 - (L) Review the allocation of the Portfolio among the Component Portfolios and make any adjustments indicated under this IPS.
 - (M) Review the investment activity reports for the Daily and Short Term Portfolios
 - (N) Review compliance of the Portfolio, as well as the individual investment managers/mutual funds, with IPS standards and guidelines and report any noncompliance to the Trustee.
 - (O) Make recommendations to the Trustee regarding additions, deletions or changes in investment managers, mutual funds, custodians, consultants and other service providers.
 - (P) Review all investment costs and expenses and report the same to the Trustee on an annual basis.
 - (Q) Develop and propose to the Trustee any amendment relative to the administrative procedures under this Rule relative to all cash management.
- (3) The duties and responsibilities of an Investment Consultant who may be retained by the Trustee under this Rule are to:
- (A) Assist with the development and periodic review of investment policies and procedures.
 - (B) Conduct searches for investment managers or mutual funds.
 - (C) Quarterly, measure and evaluate performance results for the total portfolio and for each separately-managed portfolio.
 - (D) Evaluate compliance of investments with IPS guidelines and report results to the Treasurer.

- (E) Analyze investment expenses and negotiate any investment management or custodial fees as requested.
 - (F) Provide other information or reports as requested by the Treasurer or the Trustee.
 - (G) Prepare Investment Manager Guidelines.
- (4) The duties and responsibilities of the External Managers retained by the Trustee relative to this Rule and under this IPS are to:
- (A) Compliance with the stated objectives and guidelines herein, as well with all applicable and governing statutory, decisional and regulatory law.
 - (B) Written acknowledgment of the IPS and specific account guidelines (“Manager Guidelines”) which reflect the investment manager’s strategy, discipline and performance benchmark.
 - (C) Quarterly statement for the funds under management showing the market value and cost basis of individual holdings as well as the following information relative to the investment manager’s designated portfolio performance benchmark:
 - (i) Performance.
 - (ii) Duration (to absolute and to worst).
 - (iii) Yield to Maturity.
 - (iv) Asset/Sector Distribution
 - (v) Average Maturity(absolute and to worst).
 - (vi) Average credit quality
- (5) The duties and responsibilities of the Custodian Bank retained by the Trustee relative to this Rule and under this IPS are to:
- (A) In re Safekeeping of Securities, hold all fund deposits in the appropriate accounts, and provide highly secure safekeeping of securities to minimize the risk of loss due to theft, fire or accident.
 - (B) Manage a securities lending program by lending securities to approved borrowers, arranging the terms and conditions of loans, monitoring market values of the securities lent and the collateral received, reporting earnings and directing the investment of the cash collateral.
 - (C) In re Settlement of Trades, all trades, where applicable, will be executed delivery vs. payment (DVP). This ensures that securities are deposited in the eligible financial institution prior to the release of funds. Securities will be held by a third party custodian, as evidenced by safekeeping receipts.
- (D) In re Collection of Income, to provide for receipt and prompt crediting of all dividend and interest payments received as a result of the Portfolio holdings. Monitor income receipts to ensure that income is received when due and institute an investigative process to track and correct late or insufficient payments, including reimbursements for any interest lost due to custodian error.
 - (E) In re Reporting, providing monthly reports showing individual asset holdings with sufficient descriptive detail to include units, unit price, cost, market value, cusip number (where available) and any other information requested by the Trustee.
- (e) **Administrative and Review Process.** — The following administrative and review procedures are intended to control risk and ensure policy compliance:
- (1) A quarterly report prepared by the Treasury Manager will be provided to the Trustee.
 - (2) An annual review of investment operations performed by the Independent Auditors.
 - (3) A desk procedures manual (“Administrative Procedures Manual”) will be developed and maintained to include legal authority, policies, job responsibilities, processing investment transactions, eligible security dealers and financial institutions, and securities descriptions.
 - (4) Review Procedures for Performance Monitoring and Policy Compliance:
 - (A) **Review of Policy:** At least annually, the policies, objectives and guidelines set forth in this document will be reviewed by the Treasurer and the Trustee. Any changes will be brought to the Trustee for approval. Key occurrences that could result in a recommendation for policy modification include:
 - (i) Significant changes in the Cash Flow Projections or liquidity needs that may warrant policy change(s).
 - (ii) Changes in long-term fixed income market trends and patterns that are materially different than those assumptions used to set the policy.
 - (iii) Significant growth (or reduction) in the assets of the Portfolio.
 - (B) **Review of Investment Results:** The

Treasurer will measure and evaluate performance at least quarterly with the External Managers. The elements to be included in these reviews are as follows:

- (i) Evaluation of the total time-weighted return for quarterly and annual periods of the Total Portfolio, each Component Portfolio, and each separate account against benchmarks established in the IPS and the Manager Guidelines.
 - (ii) Evaluation of risk adjusted returns, using Standard Deviation as a measure of risk, relative to the respective Performance Benchmark(s).
 - (iii) Evaluation of yield for quarterly and annual periods relative to the respective Performance Benchmark(s).
 - (iv) Compliance of investments with the guidelines and standards in this IPS for diversification and quality, as well as with statutory guidelines.
 - (v) Review of the balances in the Component Portfolios for sufficiency in relation to the Cash Flow Projection.
 - (C) **Review of Investment Managers:** The Trustee shall meet with the Investment Managers annually to review strategy and confirm that the managers continue to satisfy Investment Manager selection criteria in this IPS.
 - (D) **Review of Investment Fees and Expenses:** The fees and expenses associated with the investment program will be reviewed at least annually to ensure they are reasonable and competitive.
- (f) **General Investment Process.** — The goals of the Trustee for the Portfolio are to preserve financial assets for future operating expenses, maintain reserves to fund unplanned shortfalls and generate income to support the activities of the Trust for the full and complete administration of the Trust Property. The investment objectives in support of these goals are as follows:
- (1) **Safety:** Safety of principal, by mitigating credit risk and interest rate risk, is the foremost objective of the investment program.
 - (2) **Credit Risk:** Credit risk (the risk of loss due to the failure of the security issuer or backer) will be minimized by:
 - (A) Limiting investments to issues of (or backed by) the U.S. Government, its agencies or instrumentalities, States and Municipalities.
 - (B) Using only those financial institutions, broker/dealers, intermediaries and advisers approved by the Trustee.
- (C) Diversifying investments so that potential losses on individual securities of a single issuer will be minimized.
- (3) **Interest Rate Risk:** Interest rate risk (the risk of a loss in market value due to general changes in interest rates) will be controlled through:
 - (A) Investing operating funds primarily in shorter term securities, money market mutual funds or similar investment pools (matching maturities with cash requirements).
 - (B) Establishing maximum guidelines for portfolio duration
- (4) **Liquidity:** The Portfolio shall remain sufficiently liquid to meet all operating requirements that may be reasonably anticipated, including matching maturities with cash requirements. However, since all possible cash demands cannot be anticipated, the portfolio should consist largely of securities with active secondary resale markets.
- (5) **Return:** The investment portfolio shall be managed with the objective of attaining a rate of return throughout budgetary and economic cycles consistent with the objectives of principal preservation, liquidity (in A and B above) and avoidance of realized losses. Return on investment is of secondary importance compared to safety and liquidity. The total annualized return for each Component Portfolio is expected to exceed the total return of the performance benchmark established in this IPS for each Component, while maximizing the portion of return derived from current income. The return for the Total Portfolio is expected to exceed the total return on the Composite Benchmark (representing the dollar-weighted composite of the three Component Portfolio benchmarks).
- (6) **Loss Avoidance:** Investment transactions shall seek to ensure that capital losses are avoided. In the event of a need to liquidate any security prior to maturity, consideration shall be given to selecting securities that avoid or minimize the realization of capital losses. Exceptions due to credit deterioration may be acceptable if such transactions were executed under guidelines listed herein and notification is made to the Treasurer and to the Trustee.
- (g) **Investments in Special Projects or Programs.** — The Trustee, from time to time, may authorize projects or special purpose financings to further a

particular program through the use of Trust funds as capital, collateral or financing. A typical program may entail depositing funds at local banks to support neighborhood lending or low-income housing. To carry out such projects or programs, Trust funds maybe allocated to investments in local banking institutions or other investments that otherwise fall outside of this policy statement. The Treasurer is authorized to implement investment strategies in support of such projects or programs upon direction from the Trustee. All investments purchased under such programs must comply with applicable provisions of Title 20 of Pennsylvania Consolidated Statutes and all other applicable statutory, decisional and administrative law and investments that fall outside of this policy's portfolio weighting constraints require notification made to the Trustee prior to trade execution.

(h) Component Portfolios. —

(1) **The Daily Portfolio:** The Daily Portfolio provides liquidity for operating expenses and other expenditures reflected in the annual Cash Flow Projection maintained by the Treasurer. The objectives are preservation of principal, liquidity to meet daily needs and a competitive yield as measured by the performance benchmark for the Daily Portfolio.

- (A) Investments shall satisfy the UTA and all applicable provisions of Title 20 of Pennsylvania Consolidated Statutes and all other applicable statutory, decisional and administrative law.
- (B) The Daily Portfolio is intended to fund daily withdrawals as well as planned withdrawals within a 12-month period.
- (C) Investments must provide liquidity as needed on a daily basis.
- (D) Investments must satisfy liquidity requirements without risk of principal loss.
- (E) Investments should generate total returns that are competitive within the parameters (above) for liquidity and risk tolerance.
- (F) Performance Benchmark shall be the 30-day T-Bill.
- (G) Subject to applicable law, the following investments are authorized per Weighting Constraints:
 - (i) **Commercial Paper:**
 - (i) Up to 100%.
 - (ii) Maximum of \$5 million in a single issuer.
 - (ii) **Bankers Acceptances:**
 - (i) Up to 50%.
 - (ii) Maximum of \$5 million in a

single issuer.

(iii) **Certificates of Deposit:**

- (i) Up to \$10 million Collateralized at 110%; one year maximum term. The maximum holding of CDs in the total portfolio, including the daily and intermediate, shall not exceed \$10 million.

(iv) **Repurchase Agreements:**

- (i) UP to 100%
- (ii) A Master Repurchase Agreement must be executed with the counter party. 102% collateral required.

(v) **Treasury Bills:**

- (i) Up to 100%.

(vi) **Agency Notes:**

- (i) Up to 100%
- (ii) No more than 20% of total portfolio per agency

(vii) **Money Market Funds:**

- (i) Up to 100%.
- (ii) S.E.C. Rule 2a7.

(H) **Diversification:** Subject to the guidelines *supra* the Daily Portfolio should be diversified to eliminate the risk of loss resulting from over-concentration of assets in a specific issuer, maturity or class of securities.

(I) **Commercial Paper:** At the time of purchase, securities from a single issuer shall not exceed 5% (or the lesser of \$5 million per issuer) of the total daily portfolio and shall be rated the highest credit quality by two of the following rating agencies: Standard and Poor (A-1), Fitch (F1), and Moody's (P-1). In the event that the 5% issuer guideline is exceeded through trading activities, written notification shall be made to the Co-Trustee & Financial Administrator and made available to Trustees.

(2) **Short Term Portfolio:** The Short Term Portfolio serves as a cushion to cover operating expenses or unplanned shortfalls that occur in the Daily Portfolio. The investment objectives are principal preservation, liquidity to fund cash outflows when needed and a return that exceeds the performance benchmark established in this IPS.

(A) **Investments:** Investments shall satisfy the UTA and all applicable provisions of Title 20 of Pennsylvania Consolidated Statutes and all other applicable statutory, decisional and

- administrative law.
- (B) **Time Horizon:** The Short Term Portfolio is intended to fund occasional shortfalls in the Daily Portfolio. Since the potential outflows are expected to be infrequent, the time horizon for investments is between one and three years.
- (C) **Liquidity:** Investments must provide liquidity as directed.
- (D) **Risk Tolerance:** Investments should satisfy liquidity requirements without risk of principal loss.
- (E) **Duration:** To satisfy the parameters for liquidity and risk tolerance (above), the maximum duration of the portfolio is 130% of the benchmark duration.
- (F) **Return:** The total return should exceed the total return of the Performance Benchmark, with emphasis on current income.
- (G) **Performance Benchmark:** Lehman 1-3 Year Government Index
- (H) **Authorized Investments and Guidelines:** Subject to applicable law, the following investments are authorized per Weighting Constraints:
- (i) **U.S. Treasury Securities:**
- (i) Up to 100%.
- (ii) Maximum maturity of 36 months.
- (ii) **Agency Securities:**
- (i) Up to 100%.
- (ii) Maximum maturity of 36 months.
- (I) **Diversification:** Subject to the guidelines *supra*, the Short Term Portfolio should be diversified to eliminate the risk of loss resulting from over-concentration of assets in a specific maturity.
- (3) **Intermediate Term Portfolio:** The Intermediate Term Portfolio serves as a reserve to fund unplanned shortfalls or capital needs. The investment objectives are principal preservation, liquidity to fund cash outflows that may be unplanned and a total return that exceeds the Performance Benchmark.
- (A) **Investments:** Investments shall satisfy the UTA and all applicable provisions of Title 20 of Pennsylvania Consolidated Statutes and all other applicable statutory, decisional and administrative law.
- (B) **Time Horizon:** The Intermediate Term Portfolio serves as a reserve for unplanned shortfalls or capital requirements. Withdrawals are generally not anticipated; therefore, the time horizon for investments is longer than three years.
- (C) **Liquidity:** Investments must provide liquidity as needed.
- (D) **Risk Tolerance:** Investments should satisfy liquidity requirements with the objective of minimizing any realized principal loss.
- (E) **Duration:** To satisfy the parameters for liquidity and risk tolerance (above), the maximum duration of the portfolio is 125% of the benchmark duration.
- (F) **Return:** Investments should generate total returns that exceed the total return of the Performance Benchmark, with an emphasis on yield maximization.
- (G) **Performance Benchmark:**
- (i) **External Managers:** 80% Lehman Intermediate Government Index / 20% 15 year MBS Index
- (ii) **Internal Portfolio:** 100% Lehman Intermediate Government Index.
- (H) Subject to applicable law, the following investments are authorized per Weighting Constraints:
- (i) **U.S. Treasury Securities:**
- (i) Up to 100%.
- (ii) **Agency Securities:**
- (i) Up to 100%.
- (ii) No more than 20% in a single issue.
- (iii) **Structured Agency Notes:**
- (i) Up to 100%.
- (ii) No more than 20% in a single issue.
- (iv) **Agency Pass Throughs:**
- (i) Up to 40%.
- (ii) No more than 10% in a single issue.
- (v) **Agency CMOs:**
- (i) Up to 20%.
- (ii) No more than 5% in a single issue.
- (vi) **Municipal Securities:**
- (i) Up to 25%.
- (ii) No more than 5% in a single issue.
- (vii) **Certificates of Deposit:**
- (i) Up to \$10 Million Collateralized at 110%; three year maximum term. The maximum holding of CDs in the total portfolio, including the daily and intermediate, shall not exceed \$10 million.

- (4) **Diversification:** Subject to the guidelines *supra*, the Intermediate Term Portfolio should be diversified to eliminate the risk of loss resulting from over-concentration of assets in a specific issuer, maturity or class of securities.
- (i) **Selection of External Investment Managers.** — Criteria for selection of Investment Managers and Mutual Funds are:
- (1) Adherence to a clearly-articulated investment strategy and discipline.
 - (2) A minimum five-year performance track record: A Manager’s performance will be compared to the appropriate benchmark designated in this IPS. Performance will be evaluated on a risk-adjusted basis considering annual returns, cumulative annualized returns, standard deviation of returns and a measure of performance in down-market cycles.
 - (3) History of the firm should include analysis of organizational structure, assets under management, clientele in the municipal and government sector and the tenure of key portfolio manager(s) responsible for the performance track.
 - (4) Negotiated Fees.
 - (5) Firm Insurance.
 - (6) Contributions and distributions can be accommodated without materially affecting performance.
 - (7) Ability to comply with all applicable and governing law, decisional law and regulations.
- (j) **Termination of External Investment Managers.** — Investment managers will be reviewed for possible replacement on an ongoing basis. Reasons for replacement may include, but are not limited to, the following:
- (1) Failure to outperform the designated benchmark on risk adjusted basis, after fees, over the investment Time Horizon or a market cycle.
 - (2) Significant under-performance relative to the designated Performance Benchmark over a two- to three-year period or a market cycle.
 - (3) Change in firm ownership or loss of key personnel.
 - (4) A real or perceived change in investment style or discipline.
 - (5) A violation of the standards and guidelines in this IPS or other provisions of these Internal Operating Procedures.
- (k) **Benchmark Definitions.** —
- (1) “30 Day Treasury Bill” shall mean returns provided by the Federal Reserve.
 - (2) “Lehman Brothers 1-3 Year Government

Index” shall mean securities in the U.S. Government Index with a maturity from 1 up to (but not including) 3 years.

- (3) “Lehman Brothers 15 Year Mortgage Backed Securities Index” or “Merrill Lynch 15 Year Mortgage Backed Securities Index” shall mean pass-through securities with an original maturity of 15 years.
- (4) “Lehman Brothers Intermediate Government Index” shall mean securities issued by the U.S. Government (Treasury and Agency securities) having a maturity from 1 up to, but not including 10 years.

Explanatory Comment

The purpose of this Rule is to provide a framework for the management of the Trust’s financial assets. The Rule (“IPS”) outlines the objectives, benchmarks, restrictions and responsibilities so that the Trustee, its agents and consultants, managers, as well as all beneficiaries and all other stakeholders clearly understand the objectives and policies of Trustees’ investment program. The Policies also encourage effective communication, facilitate transparency and compliance, and provide a framework for reporting back to the Trustee as appropriate. The Policies set forth the guidelines which the Trustee and their External Managers deem to be appropriate and prudent in consideration of the needs of and the legal requirements applicable to the proper administration of the Trust’ assets outside of and in support of the principal Trust Property. The IPS provide criteria against which investment results will be measured and serve as a review document to guide ongoing operations and oversight. The IPS also are intended to ensure that the Trustee and their agents, are fully fulfilling their fiduciary responsibilities in the management of Trust investments. The Trustee intend for the IPS to be a dynamic document and will review them from time to time. Policies will be modified periodically to reflect the changing nature of the Trust’s assets and investment programs, benefit and structural changes, and economic conditions.

The Trustee’ general investment goals are broad in nature. The overall objective of this IPS is to provide the Trustee the fullest protection of the Trust Property by sufficient funding irregardless of any election cycle. This will be accomplished through a carefully planned and executed long-term investment program that efficiently and effectively allocates and manages the financial assets of the Trust. The IPS has been designed to allow the Trustee to achieve a long-term total return. As such, prudent risk-taking is appropriate within the context of overall diversification to meet the Trustee’ long-term investment objectives. The assets of the Trust will be broadly diversified to minimize the effect of short-term losses within any investment program. Consistent with the UTA, all of the Trustee’ investment activities, and all investment transactions, shall be designed and executed solely in the interest of, and for the exclusive purposes of protecting the Trust Property for the future access to and use by all beneficiaries, minimizing dependence on campaign contributions within any election cycle, and defraying reasonable expenses of administering the system

Part IV. Trust Property Election Cycle Usage

Explanatory Comment

This Part concerns the practical components of implementing *We the People Today*[™] by each state and county party chairman and by the individual precinct committee people. The Internal Operating Procedures are divided into parts so that party chairs and committee members can resort to applicable rules without being burdened by other rules concerning trust administration.

The term “Chair(man)” refers to not only to state and county party chairmen, but also the DNC and RNC chairman and national and state Democratic and Republican committee people, along with supporting staff employees as defined by IOP Rule 1, and depending on context, local Democratic and Republican chairmen.

The term “poll watcher” used throughout this Part as per usage as per Pennsylvania election law, referring to a party official who monitors the district election board’s conduct of the election. 25 P.S. § 2687. Each respective state may have different titles or varying range of authority.

IOP Rule 9 Sub-Table of Contents

(a) Scope	53
Part I. Background Information	53
(b) Compliance with The Lincoln Rule	53
(c) What is Rule Covers	53
(d) What You Should Expect from <i>We the People Today</i> [™]	53
(e) Voter Measurement Indices	54
(f) Optimal Voter Data	54
Part II. Data Collection Requirements	54
(g) Software Administration	54
(h) Collecting Historical Election Data	55
(i) Collecting Voter Profile Data	55
Part III. Precinct Election Cycle Use	56
(j) Operational Premises	56
(l) Use During Pre-Election GOTV Efforts	58
(m) Use During Election-Eve	58
(o) Use While Polls Open	59
(p) Use After Polls Close	59
Part IV. Questions and Answers	59
(q) Questions and Answers	59

Rule 9 Trust Property Usage.

- (a) **Scope.** — The scope of this Rule is the description on how use the Trust Property by precinct committee people and their respective county chairs.

Part I. Background Information

- (b) **Compliance with The Lincoln Rule.** — *We the People Today*[™] is designed to automate tasks to enable the State and County party chairs assure the precinct committee persons satisfy the Lincoln Rule: “The only way you win elections is by getting more of your supporters to the polls than your opponents.”
- (c) **What is Rule Covers.** —
- (1) This Rule covers all primary matters which involves the precinct committeeman and committeewoman or similar name, such as precinct captain, (hereafter “committee person” unless text otherwise provides).

- (2) Throughout this rule the reference to:
- (A) “you and your colleague” means both the Committeeman and Committeewoman, if state law or party rules requires such election by gender; otherwise the reference means the elected precinct party official.
- (B) “your team” means all the Party Whips (block captains), poll watchers, poll workers, drivers and street canvassers helping you in your precinct.
- (C) “*We the People TODAY*[™]” refers to the Trust Property, to which you, the precinct committee person is entitled to use for free. The term “Trust Property,” “Program” or “Software” is the same.
- (D) “*We the People TODAY.org*[™]” is the website portal which voters, your constituents, communicate with you and which you enter to use the various *We the People TODAY*[™] modules. The term Portal is the same.
- (E) “County board of elections” is the county or municipal executive agency responsible for the administration of elections, as distinguished from the state executive agency, most commonly known as the “Secretary of State.”
- (F) “County HQ” is your party’s county headquarters or general offices, or if your county party committee does not have such an office, the office of your county party chairman.
- (G) “DVC” means Direct Voter Contact, that you have contacted the voter in person or by telephone (but not by mail).
- (H) “SNVC” means Social Network Voter Contact, that you have contacted the voter by email, text or an online media such as Facebook or Twitter, in one-to-one communications.

- (d) **What You Should Expect from *We the People Today*[™]** — Provided all requirements within this Rule are satisfied, you and your colleague should expect the following:

- (1) Internet originated **Referrals** from registered party electors and also from Misaligned party electors and Independents who have affinity with your party’s principles. These referrals come to you via LincolnCharitableTrust.org[™] which is the public portal to *We the People Today*[™]. Your response in satisfying these Referrals are measured by *We the People Today*[™] which keeps a tally and transmits a daily **Committee Status Report** to the county chairman ranking you and your colleagues as

active, semi-active or inactive precinct committee people. This report is generated by measuring usage and performance benchmarks that measure:

- (A) The number of **Voter Validations** which you provide within three (3) days (excluding Sunday and holidays) in response to a LincolnCharitableTrust.org™ generated inquiry, offer or request. Voter Validation is the process which you confirm the updated voter information as a check against abuse or fraud.
 - (B) The number of **Voter Enlistments** by you provide within three (3) days (excluding Sunday and holidays) after receipt of an email from a LincolnCharitableTrust.org™ generated inquiry, offer or request. Voter Enlistment is a confirmation of a voter's offer to host or attend a party or campaign event or perform party or campaign tasks, or to contribute.
 - (C) The number of **Voter File Updates** which you personally process updating the voter basic, demographic and the voter's Election Whip contact/PAT information is updated, in relation to the party TLI quota established for the precinct and as a percentage of voter files updated versus voter files not updated.
 - (D) The number of party whips (block captains), drivers, poll watchers and other poll workers which you designated in relation to the number of voters within your precinct.
- (2) Your precinct's Pre-Election **Party TLI Quota Report**, which establishes the number of registered party electors required to turnout in order for top of ticket to win. This Report is generated by comparing historical party TLI and PCI with current voter registration.
 - (3) Your **Precinct Readiness Report**, which advises your county chairman if you and your colleague have adequate resources in place for Election Day.
 - (4) A Pre-Election **Voter Fraud List** indicating those persons who despite being registered within a precinct are suspect by reason of USPS or Social Security records.
- (e) **Voter Measurement Indices.** — You should understand that *We the People Today*™ generates the following indexes to gauge the number of votes required for your party's victory:
- (1) **TLI**, for **Turnout Loyalty Index**, which is the total votes cast for a particular candidate in

a given election divided by the number of voters registered within that political party.

- (2) **PCI**, for **Partisanship Consistency Index**, which is the difference between the highest party percentage and the lowest party percentage in any given election. A low PCI suggests that voters tend to vote a straight ticket; a high PCI suggests heavy ticket splitting.
 - (3) **CI**, for **Competition Index**, is the mean of these election results statistics, carried to four decimal points, ranging potentially from .0000 (absolute Democratic domination) to 1.0000 (absolute Republican domination), where as CI of .5000 would suggest an evenly competitive environment.
- (f) **Optimal Voter Data.** —
- (1) While it is the Trustee's responsibility to obtain from the respective state agency the state voter database then enhance such lists with various "overlays" (specialized demographic information) that is appended to each voter file; what makes *We the People Today*™ unique is you.
 - (2) *Voter Information Required for Voter Profile.* It is your responsibility to input the ultimate "overlays" of useful voter data that comes from both the voters from their input on LincolnCharitableTrust.org™ plus the peer-to-peer contact only you and your team can gather by knowing your voters.
 - (3) *Why.* In other words, who knows the voter better than anyone else — you or some commercial vendor who basically provide data which is instantaneously "stale" as soon as it is generated. Accordingly, only voters and you and your colleague are capable of making any voter database current by continuously updating the voter data file when required.
 - (4) *Voter Validation.* This responsibility is important particularly in regard to Voter Validation procedures. Whenever a Voter seeks to update his or her voter file information, such information remains suspended until you personally verify (via a personal visit, phone call or email) that the voter did in fact intended to update his or her voter file and that such updated information is correct. This process assures protection against security breaches, computer hacking, or identity theft.

Part II. Data Collection Requirements

(g) **Software Administration.** —

- (1) *Starting Date.* The Trustee commences implementation (rollout) of *We the People*

TODAY™ once all requirements under IOP Rule 5 are satisfied.

- (2) *Posting of Voter Data Input Page.* The Trustee will post the Voter Data Input page on *We the People TODAY.org*™ portal and at the same time will notify all Qualified Beneficiaries (county committees and all precinct committee people who are registered with the Trust through their county committee or who registered by themselves) of such posting.
- (3) *Integrating HAVA or commercial voter lists into Software.* Each Qualified Beneficiary may elect to rely only on Voter lists provided by the Trust's vendor or to enhance such list with data from other commercial vendors or party/501(c)(4) house lists subject to the approval by the Trustee whose consent shall not be unreasonably withheld.
- (4) *Technical Bulletins.* The Trustee will issue Technical Bulletins that provide additional information for the benefit of all users.
- (5) *Readiness for November 2014 Elections.* The readiness of *We the People TODAY*™ for any election will be solely dependent on the Qualified Beneficiaries (state and county committees who are registered with the Trust) within the respective state to generate voter data which the Software requires.
- (6) *Future Elections.* The comprehensiveness of initial data collected for the November 2014 elections, coupled with the continuous updating of Voter Profiles will be solely dependent on the Qualified Beneficiaries (state and county committees who are registered with the Trust) within the respective state to update voter data which the Software requires.

(h) Collecting Historical Election Data. —

- (1) *Local Election Data.* The Election Indices cannot adequately function unless the precinct committee person inputs historical election data for the precinct for not less than ten (10) years prior to the current election cycle.
- (2) *County Election Data.* The Election Indices cannot adequately function unless the county committee inputs historical election data for the precinct for not less than twenty five (25) years prior to the current election cycle for all county wide and assembly district races within the county, including Presidential, gubernatorial, Senatorial and Congressional election results.
- (3) *Opting out Election Indices.* Any County Committee can opt out of the Election Indices Module by electing not to input historical

election data.

(i) Collecting Voter Profile Data. —

- (1) *Voter Files.* The **Voter Profile Module** and the **Election Day Whip Module** will not be functional unless each precinct committee person collects and inputs voter data on each voter within his/her precinct by either DVC (Direct Voter Contact) or SNVC (Social Networking Voter Contact) survey of the voter or reviewing/verifying the voter's inputted data into *We the People*.™ The data collected is as required under IOP Rule 2(h).
- (2) *Minimal Voter Profile Data Required.* The precinct committee person may exercise his discretion as to the amount of voter data required to be collected, but minimally all data necessary for PAT must be obtained, being:
 - (A) The regulator Poll Arrival Time (PAT).
 - (B) Voter's designation after voting (i.e. work).
 - (C) Voter's contact information at designation (i.e. work) including landline and cell phone, email address, etc.
 - (D) Whether the voter requires transportation to the polls or other Election Day assistance (i.e. babysitting, ADA poll assistance).
- (3) *Comprehensive Voter Profile Data Sought.* The Software better identifies not only Super or Strong Party voters but also Misaligned voters who may vote for your party through compilation of civic indica data which is not commercially available and must be gathered one to one. This data includes:
 - (A) PAT (Poll Arrival Time) and complete contact information and preference of contact should the voter not make his PAT.
 - (B) Whether transportation is required to polls due to age or disability.
 - (C) Whether voting assistance is required due to age or disability, and if so, whether the voter has complied with applicable state laws. This includes handicap access and language translation.
 - (D) Contact Preference. Does the voter prefer to be contacted by phone and if so which one, by email, text, mail or direct contact. It is your responsibility to make sure the proper phone and email address is obtained that the voter is accessible.
 - (E) HHD status, to be generated by affixing spouse at same address.
 - (F) House/Home Indicator: is the voter an owner or renter, what is the value, zoning

- of the residence.
- (G) Religious Preference. (Of course, if the voter wishes not to disclose such, that is not only his right, but such alone is an indication of the voter's interest).
 - (H) Ethnicity Indicator.
 - (I) Membership in Fraternal Society
 - (J) Occupational/Educational Indicator:
 - (i) Member labor union.
 - (ii) Chamber of Commerce.
 - (iii) Self-employed (license).
 - (iv) Atty (Bar membership).
 - (v) CPA (license).
 - (vi) Healthcare (license).
 - (vii) Officeholder.
 - (viii) Civil Service.
 - (K) Education: highest level obtained.
 - (L) Military/ Veteran Indicator: Ascertain if veteran or on active duty, regular or reserves and whether involved with American Legion, VFW, VVW, etc.
 - (M) Reserved.
 - (N) Civic Indicator:
 - (i) Service Clubs (e.g. Lions)
 - (ii) Scouts (Boys, Girls).
 - (iii) Social welfare/ relief
 - (iv) FFA/ Grange
 - (v) Fraternal Societies.
 - (O) Advocacy Indicator:
 - (i) Environmental.
 - (ii) Social Justice.
 - (iii) Gun control or NRA.
 - (iv) Community/ Civic.
 - (v) Law/Court Improvement.
 - (vi) Pro-Life or Pro-Choice.
 - (P) Public Safety Indicator:
 - (i) Police (FOP).
 - (ii) Firefighter (IAFF or Vol).
 - (iii) Sheriff or Constable.
 - (iv) EMS (IAFF or Vol).
 - (Q) Party Participation Indicator:
 - (i) Contributor.
 - (ii) Volunteer.
 - (R) Desire to Volunteer.
 - (i) GOTV.
 - (ii) Circulator.
 - (iii) Poll Watcher/Inspector.
 - (iv) Transportation.
 - (v) Other.
- (4) *Voter Fraud List.* The Voter Fraud List will be a combination of overlays provided by the Trustee, namely identification of deaths from the Social Security database, plus what you and your team also provide. Because USPS is prohibited by law from providing data whether mail is deliverable, you and your team will be required to observe and record the following:
- (A) Whether a voter is hospitalized or in a hospice or other long-term healthcare facility.
 - (B) Whether the house is abandoned, as evidenced by blight conditions.
 - (C) Whether the house has been damaged by fire, natural disasters, Acts of God.
 - (D) Whether there is large influx of non-citizen residents.
- (5) *Voter Validation.* You or your colleague will verify all voter inputs into *We the People TODAY* by voters who self-edit their voter data.
- (A) Once a voter seeks to self-correct or self-edit their Voter Profile online at *LincolnCharitableTrust.org*, the Software will transmit a referral to you or to County HQ which will re-transmit to you the voter and his updated voter profile.
 - (B) At this time, you will review and authorize the Voter Profile Update. You are to do this by DVC or SNVC so that the voter knows who you are and that you are his elected party representative.

Part III. Precinct Election Cycle Use

- (j) **Operational Premises.** — *We the People TODAY™* is a tool that automates what traditionally is a time-consuming and labor intensive tasks imposed upon precinct committee people and assumes the following premises:
- (1) That there are at least two committee people per precinct (usually a committeeman and a committeewoman).
 - (2) That the state Election Code authorizes poll watchers or similar persons to represent the party and/or candidates to ascertain the veracity of the voters appearing to cast ballots. *See Explanatory Comment regarding poll watchers by state.*
 - (3) That a precinct on average, consists of 1,000 voters more or less and is the smallest political subdivision within the state.
 - (4) That your polling place has wireless access, that is, your smart phone or laptop PC is fully functional in accessing the Internet to get to *We the People TODAY.org™* portal and the building which is housing the polls has electrical outlets so you can recharge your smart phone and/or laptop.
 - (5) That you have inputted minimally the PAT Contact Information data required under this Rule at IOP Rule (9)(i)(2) on every registered elector within your party and those electors in the opposing party or who are independent/ no party who express affinity with your party.

(k) **Start of and During Election Cycle.** — At the start of each election cycle, you and your colleague should ascertain and verify that each of the following have been completed:

- (1) *Registration with the Trustee.* That you have registered or updated your Beneficiary Registration as required by IOP Rule 2, by providing your contact information at www.LincolnCharitableTrust.org.™
- (2) *Filed Email Address to County HQ.* That you have provided your email address to State (or county) party HQ who is designated to screen LincolnCharitableTrust.org™ voter referrals to the proper precinct committee person and/or county party committee.
- (3) *Precinct Readiness Report.* That you have prepared online your **Precinct Readiness Report** and transmitted it to your County HQ no later than 14 days prior to the Election, providing the following:
 - (A) Whether you will be working full-time on Election Day or whether you will have a substitute working full-time or part-time when you not present.
 - (B) Whether your colleague will be working full-time on Election Day or whether he/she will have a substitute working full-time or part-time when he/she will not be present.
 - (C) Party Whip per block or section of precinct.
 - (D) At least one Driver assigned at large.
 - (E) At least one Driver assigned for senior citizen centers.
 - (F) An IT Director to supervise *We the People Today*™ and resolve hardware or online access breakdowns or difficulties.
 - (G) An adequate number of poll watchers to monitor voter sign in and challenge fraudulent voters.
 - (H) Verification that precinct polling place is fully accessible via broadband or WiFi access.
 - (I) Verification that one of you (whichever is assigned to work inside the polls to check off the voters) or poll watcher has laptop with full broadband or WiFi access.
 - (J) Verification that one of you (whichever is assigned to work outside the polls to greet the voters) and/or Party Whips have I-Phones, Blackberries or similar PDAs to receive live data from Committeewoman or poll worker regarding voter turnout.
 - (K) Whether you will be producing via *We the People Today*™ personalized sample ballots or you will be relying on state or county Republican committee to print sample

ballots.

- (4) *Obtainment of Poll Watcher Certificates.* That you have, in accordance with applicable state law, have filed a **Poll Watcher Certificate Request** for or referred the name of your designated Poll Watcher to your County Chairman for filing with the county board of elections, not less than three (3) days prior to the statutory or administrative deadline for receipt of such certification requests by the County Board of Elections.
- (5) Reserved.
- (6) *Designation of local Ancillary Trustee.* That you have the county chairman designate one local Ancillary Trustee if both you and your colleague do not have a laptop and broadband Internet access, or you are otherwise apprehensive about using computers. The county chairman is alerted to the probability of such a need if you have not provided your contact information by registration at LincolnCharitableTrust.org.™
- (7) *Voter Profiles Updated and Current.* All leads generated from LincolnCharitableTrust.org™ are processed promptly upon being referred to you from state or county party HQ and that the voter has been contacted by your or your colleague within one week of referral. You or your colleague are to immediately input and process the voter's interest into his Voter File:
 - (A) PAT contact information to which the Software can contact the voter if he has not arrived at the Polling Place at his regular poll arrival time (PAT). The System will contact the voter via cell phone, land line phone, email, or text, or when required in person by the committee person or party whip.
 - (B) Sufficient voter profile information that enables identification of the voter as Super, Strong, Moderate or Weak party affiliation. This data will include identification of civic and other community participatory indica that generally reflect a voter's party affiliation.
 - (C) If the voter desires to participate by assisting you and your colleague; capture the data and begin to assign tasks to the volunteer.
 - (D) If the voter desires to participate in a campaign you or your colleague should contact the voter as well as the campaign he is interested in.
 - (E) If the voter does not identify any specific request or action, you or your colleague should contact the voter to solicit what

particular course of action the voter is interested in pursuing.

- (8) *Collection of Historical Voter Data.* That local historical TLI, PCI and CI has been compiled not less than one month prior to Election Day to assure accurate party TLI quotas, *if requested* by the county chairman.
 - (9) *Referring Misaligned Voters.* That you are directing as many registered party electors and misaligned opposing party electors as is possible to LincolnCharitableTrust.org™ so that additional demographic and contact information is captured for your benefit and moreover so that your voters have a productive and efficient way to communicate to you via the Internet without overloading your personal email box.
- (l) Use During Pre-Election GOTV Efforts.** — At the start of each Pre-Election GOTV effort, you and your colleague should verify that each of the following have been completed:
- (1) *Update of as Many Voter Profiles Possible.* You and your team should have contacted as much of your constituent voters as is reasonably possible by DVC or by SNVC.
 - (A) The Trust helps by promoting SNVC via viral (Interet) campaigns and by general press coverage to generate Voter R e f e r e n c e s v i a LincolnCharitableTrust.org.
 - (B) You and your team are to reach as much of the balance of voters as you can.
 - (2) *Identification of Voters by Degree of Party Support.* That you have contacted all Solid, Strong and Leaning party electors, and all Misaligned electors determined to be Strong or Leaning Party either by DVC or by SNVC by LincolnCharitableTrust.org. You particularly want to assure that:
 - (A) Each Super and Strong Party Voter has been contacted by you by DVC or SNVC and that his Voter Profile and PAT contact information is fully up to date.
 - (B) Each Super and Strong Party Voter has been invited to make a Levin Fund campaign contribution, because voters who make financial commitments tend to be stronger voters; in particularly by inviting the Super and Strong Voter to join in the National Party Conference Call held one week prior to Election Day.
 - (3) *Party Whips.* That you have recruited the necessary number of Party Whips (block captains), drivers (to transport nonambulatory voters to the polls), and poll watchers to monitor the election boards (as proposed by

- We the People Today™ as necessary to deliver the required Party TLI set for your precinct) have been appointed or designated.
- (4) *Party Whip Lists.* That you have provided each of your street canvassers (i.e. Party Whip, campaign workers) their *We the People Today™* generated “walking lists,” and are inputting data re voter response and Re-PAT information into We the People Today.™
 - (5) *Reports.* That you have completed the end-of-day reports showing the number of the aforementioned voters who have been contacted personally or by email by you or your colleague or Party Whip has been generated and sent to county party HQ.
 - (6) *National Party Conference Call.* That you have invited as many Super and Strong Party voters and those Misaligned Voters who are leaning to your party to sign-up for the National Party Conference Call to be held on the evening of the Tuesday prior to Election Day.
 - (A) The purpose of getting Super and Strong Party Voters to join the National Party Conference Call is to Involve and Mobilize them so that their support is even greater, particularly by a Levin Fund Campaign contribution, which you will advise them does not leave the precinct or minimally, the county.
 - (B) The purpose of getting Misaligned Voters who are leaning to your party to join the National Party Conference Call is a final attempt for the candidates and/or party leadership to persuade the Misaligned Voters to split their tickets.
- (m) Use During Election-Eve.** — On Election-Eve, you or your colleague should verify that each of the following are being completed:
- (1) *WiFi and Adequate Power Supply.* That either you or your colleague has confirmed that broadband access and adequate electrical power for laptops is available at your polling place and all standby resources (cabling, spare batteries, re-chargers, etc.) are available.
 - (2) *Election Whip List.* A final hard-copy Pre Election Day **Election Whip List** has been generated and for those Party Whips who do not have I-Phones, Blackberries or PDAs.
 - (3) *Voter Fraud List.* A Final **Voter Fraud List**
 - (4) *TLI Goal.* You and your colleague have your final **Party TLI Quota** so you can tell your team how many voters your precinct must get to the polls.

- (n) Use Before Polls Open.** — Before the polls open

on Election Day, you and your colleague should verify that each of the following are being completed:

- (1) The interior Committee person or poll watcher is at the polling place and her laptop is fully charged and broadband access is established.
 - (2) The exterior Committee person or poll worker is at the polling place and his I-Phone, Blackberry or PDA is fully charged, or his cell phone is fully charged to receive notice of voters missing their Re-PAT.
 - (3) Each Party Whip is ready at his base and his I-Phone, Blackberry or PDA is fully charged, or his cell phone is fully charged to receive notice of voters missing their Re-PAT.
 - (4) The poll watcher has his copy of the **Voter Fraud List**.
 - (5) Reserved.
- (o) **Use While Polls Open.** — While the polls open on Election Day, you and your colleague should verify that each of the following are being completed:
- (1) You or your colleague has sent to the county Chairman his 9:00 A.M., 12 Noon, 3:00 P.M., 5:00 P.M. and each hour thereafter until the polls are closed, **Party TLI Report** indicating the number of registered party electors and misaligned opposing party electors who have voted and who have not voted and percentage thereto indicating whether your precinct is ahead of, on track or falling behind its established party TLI quota.

(p) **Use After Polls Close.** — At the close of the polls on Election Day, you and your colleague should verify that each of the following are being completed:

- (1) The final **Election Whip List** has been generated showing
 - (A) The final **Vote Tally** for the precinct by machine and by absentee or alternative ballot has been reported to national, state, and county party HQs.
 - (B) A final **Party TLI Report** has been prepared showing:
 - (i) Whether your precinct met its Party TLI quota.
 - (ii) The breakdown of the Party TLI by Solid, Strong, and Leaning Party electors and Misaligned Opposing Party Electors by Strong and Leaning Republican. the names of all Solid, Strong and Leaning Party Electors who did not vote and the assigned Party Whip thereto, along with any explanation or justification why the voter did not appear at the

polls.

- (C) The Final **Voter Fraud List** has been generated showing the names of voters challenged versus voters who did not appear and whether those voters challenged voted by regular or provisional ballot; and description of whatever proof was proffered by the challenged voter to establish the veracity of his identification or domicile
- (2) You or your colleague has gathered and if needed, return to the District Trust possession of all hardware, cabling, etc., from the polling place and any hardware lent to committee people, Republican Whips, etc.

Part IV. Questions and Answers

(q) Questions and Answers. —

- (1) *Is the National Party Allowed to be involved with We the People TODAY?™* No. BCRA prohibits the DNC, the RNC, the DCCC, DSCC, NRCC, NRSC and Federal campaigns from providing any resource (a financial contribution or an in-kind contribution) to any state, county or local party committee, when the latter is also involved in non-Federal campaigns.
- (2) *Can we use data from e.g., NGP Van or Data Trust.* You can, but such data is both extremely expensive and highly unreliable. Such data is generally collected from consumer micro-targeting research. Any DVC data collected by primarily by inexperienced campaign workers with marginal knowledge of the community and its constituents. Voter data gathered by DVC by precinct committee people historically has been the most reliable voter data collected, and has been so since Abraham Lincoln initiated the concept over 150 years ago.

Explanatory Comment

I. Election Day Whip™

The following is the summary of Poll Watcher laws in each of the states, as collected by the National Association of Secretaries of State (NASS).

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|---------|--|
| Alabama | In general elections, a poll watcher must be appointed by the chairman of the party's county executive committee, or by a nominee, or by a beat committeeman. Each watcher shall be a resident and qualified elector of the State of Alabama. Election officials, including returning officers, may not serve as poll watchers. (Alabama Code § 17-8-7; Alabama Secretary of State). |
| Alaska | One or more persons may be appointed as a poll watcher for each precinct or counting center for any election. Poll watchers are appointed by: the precinct party committee where an organized |

	precinct committee exists; the district party committee where no organized precinct committee exists; the state party chair where no precinct or district committee exists; candidates not representing a political party; organizations or organized groups that sponsor oppose an initiative, referendum or recall. (Alaska Stat. § 15-10-170).		be entitled to designate no more than two official poll watchers in each precinct to be selected by the appropriate party or body executive committee. Each independent candidate shall be entitled to designate one poll watcher in each precinct. In addition, candidates running in a nonpartisan election shall be entitled to designate one poll watcher in each precinct. Each eligible political party and political body shall additionally be entitled to designate no more than 25 official state-wide poll watchers to be selected by the appropriate party or body executive committee. Each independent candidate shall also be entitled to designate no more than 25 official state-wide poll watchers. (Ga. Code Ann. § 21-2-408).
Arizona	The county chairman of each party may designate a party agent or representative and alternates for a polling place in the precinct who may act as challengers for the party which appointed him. At each voting place, one challenger for each political party may be present. (Ariz. Rev. Stat. § 16-590).		
Arkansas	Poll watchers shall include any: (1) candidate in person, but only during the counting and tabulation of ballots and the processing of absentee ballots; (2) authorized representative of a candidate; (3) authorized representative of a group seeking the passage or defeat of a measure on the ballot; and (4) authorized representative of a political party with a candidate on the ballot. Only one (1) authorized poll watcher per candidate, group, or party at any one (1) given time may be officially recognized as a poll watcher at each location within a polling site.	Hawaii	Each qualified political party shall be entitled to appoint no more than one watcher who may be present at any time in each precinct and absentee polling place in which the candidates of that political party are on the ballot. All watchers so appointed shall be registered voters. (Haw. Rev. Stat. § 11-77).
		Idaho	The county clerk shall, upon receipt of a written request, direct that the election judges permit one (1) person authorized by each political party, if the election is a partisan election, to be at the polling place for the purpose of challenging voters, and shall, if requested, permit any one (1) person authorized by a candidate, several candidates or political party, to be present to serve as a watcher to observe the conduct of the election. (Idaho Code § 34-304).
Colorado	A "watcher" is an eligible elector other than a candidate on the ballot who has been selected by a political party chairperson on behalf of the political party, by a party candidate at a primary election, by an unaffiliated candidate at a general, congressional vacancy, or nonpartisan election, or by a person designated by either the opponents or the proponents in the case of a ballot issue or ballot question. If selected by a political party chairperson, a party candidate, or an unaffiliated candidate, the watcher shall be affiliated with that political party or unaffiliated as shown on the registration books of the county clerk and recorder. (Colo. Rev. Stat. § 1-4-104; also see 1-7-108; 1-9-01; 8 CCR 1505-1, Rule 8).	Illinois	Each established political party shall be entitled to appoint two pollwatchers per precinct. Such pollwatchers must be affiliated with the political party for which they are pollwatching. For all elections, the pollwatchers must be registered to vote in Illinois. Each candidate shall be entitled to appoint two pollwatchers per precinct. For all elections, the pollwatchers must be registered to vote in Illinois. Each organization of citizens within the county or political subdivision, which has among its purposes or interests the investigation or prosecution of election frauds...shall be entitled to appoint one pollwatcher per precinct. For all elections, the pollwatcher must be registered to vote in Illinois. Each State nonpartisan civic organization within the county or political subdivision shall be entitled to appoint one pollwatcher per precinct, provided that no more than 2 pollwatchers appointed by State nonpartisan civic organizations shall be present in a precinct polling place at the same time. The pollwatchers must be registered to vote in Illinois. (10 Ill. Comp. Stat. § 5/17-23; also see Illinois Guide for Pollwatchers).
Delaware	Each of the political parties, acting through their respective county committees, may appoint and accredit some suitable person as a challenger. One challenger from any political party which is represented by a candidate in that district may be present inside the polling place and shall be permitted to observe the conduct of the election and all the election records. (Del. Code Ann. tit. 15, § 4934). Each of the political parties, acting through their respective county committees, may appoint and accredit some suitable person as a challenger. (Del. Code Ann. tit. 15, § 4934; also see 4934-4941).		
Florida	Each political party and each candidate may have one watcher in each polling room or early voting area at any one time during the election. A political committee formed for the specific purpose of expressly advocating the passage or defeat of an issue on the ballot may have one watcher for each polling room or early voting area at any one time during the election. Each poll watcher shall be a qualified and registered elector of the county in which he or she serves. (Fla. Stat. § 101.131).	Indiana	Watchers may be appointed by political parties, certain candidates, by the county election board in certain votes on public questions or by the media to monitor activities at the polling place. Each political party or independent candidate may have only one watcher at each precinct at any time during Election Day.
Georgia	Each political party and political body shall each	Iowa	Poll watchers may be appointed by the following: political party executive or central committees;

	<p>non-party political organizations (NPPOs); candidates who are “Nominated by Petition,” and groups opposing or supporting public measures on the ballot. Poll watchers may also be called challenging committees or observers. Poll watchers acting as challengers must be registered voters in the county where the challenge occurs. (Iowa Poll Watchers Guide). See Iowa Code § 49.104 for information on individuals authorized to be in the polling place.</p>	<p>Comp. Laws § 168.730). Poll watchers are permitted in the polling place to observe the election process. (Michigan Secretary of State, The Appointment, Rights, and Duties of Election Challengers and Poll Watchers).</p>
Kansas	<p>Each of the following persons is automatically a poll agent (commonly referred to as poll watchers) because of the position they hold: state or county party chair; chair of a committee formed to support or oppose a question submitted election; candidate; political party precinct committee man or woman; write] in candidate for statewide office who has filed an affidavit of write] in candidacy with the Secretary of State. A person may be appointed to be a poll agent by one of the persons listed above. Each person who is authorized to appoint poll agents may appoint one per polling place. (Kan. Stat. Ann. ~25-3005a; Kansas Secretary of State, Election Administration Standards).</p>	<p>Minnesota At election to fill partisan offices, the chair of an authorized committee of each major political party may appoint by written certificate voters from that political party to act as challengers of voters at the polling place for each precinct. Only one challenger from each major political party for each precinct shall be allowed to remain in the polling place at one time. A challenger must be a resident of the state. (Minn. Stat. § 204C.07). See Minn. Stat. § 204C.06 for information on other individuals allowed in the polling place.</p>
Kentucky	<p>The county executive committee of any political party having a ticket to elect at any regular or special election may designate not more than two (2) challengers to be present at and witness the holding of the election in each precinct in the county. (Ky. Rev. Stat. Ann. § 117.315; also see §§ 117.315 - 117.317). See Ky. Rev. Stat. Ann. § 117.235 for information on individuals authorized to be in the polling place.</p>	<p>Mississippi The following persons shall be designated as authorized challengers and shall be allowed to challenge the qualifications of any person offering to vote (a) any candidate whose name is on the ballot in the precinct in which the challenge is made; (b) any official poll watcher of a candidate whose name is on the ballot in the precinct in which the challenge is made; (c) any official poll watcher of a political party for the precinct in which the challenge is made; (d) any qualified elector from the precinct in which the challenge is made; or (e) any manager, clerk or poll worker in the polling place where the person whose qualifications are challenged is offering to vote. (Miss. Code. Ann. § 23-15-571).</p>
Maine	<p>Municipalities must allow at least one worker from each political party to remain outside the guardrail enclosure as a pollwatcher. (21-A Me. Rev. Stat. Ann. § 627).</p>	<p>Missouri The chair of the county committee of each political party named on the ballot shall have the right to designate a challenger for each polling place, who may be present during the hours of voting, and a challenger for each location at which absentee ballots are counted, who may be present while the ballots are being prepared for counting and counted. All persons selected as challengers shall have the same qualifications required by section 115.085 for election judges, except that such challenger shall be a registered voter in the jurisdiction of the election authority for which the challenger is designated as a challenger. (Mo. Rev. Stat. § 15-115.105.1).</p>
Maryland	<p>The following persons or entities have the right to designate a registered voter as a challenger or a watcher at each place of registration and election: the State Board for any polling place in the State; a local board for any polling place located in the county of the local board; a candidate; a political party; any other group of voters supporting or opposing a candidate, principle, or proposition on the ballot. (Md. Ann. Code Art. 33, § 10-311). See Md. Ann. Code Art. 33, § 10-308 for information on individuals authorized to be in the polling place.</p>	<p>Montana The election judges shall permit one poll watcher from each political party to be stationed close to the poll lists in a location that does not interfere with the election procedures. (Mont. Code. Ann. § 13-13-120).</p>
Mass.	<p>The state committee of a political party may appoint a person to act as a challenger of voters at any polling place in the commonwealth at a state election (Mass. Gen. Laws ch. 54, § 85A).</p>	<p>N.H. The state committee of a political party may appoint a person to act as challenger of voters at any polling place in the state at a state election. (N.H. Rev. Stat. Ann. § 666.4).</p>
Michigan	<p>At an election, a political party or an incorporated organization or organized committee of citizens interested in the adoption or defeat of a ballot question being voted for or upon at the election, or interested in preserving the purity of elections and in guarding against the abuse of the elective franchise, may designate challengers as provided in this act. A political party, incorporated organization, or organized committee of interested citizens may designate not more than 2 challengers to serve in a precinct at any 1 time. A challenger shall be a registered elector of the state (Mich.</p>	<p>New Jersey The chairman of the county committee of any political party that has duly nominated any candidate for public office to be voted for at an election by all the voters within the county or any political division thereof greater than a single municipality, or where the election is within and for a single municipality only, or any subdivision thereof, then the chairman of the municipal committee of the political party making such nomination within and for such single</p>

	municipality, or subdivision thereof, may appoint two challengers for each election district in the chairman's county or municipality, as the case may be. (N.J. Stat. Ann. § 19:7-1).		(Oklahoma Statutes 26-7-130).
N.M	The county chair of each political party represented on the ballot may appoint in writing challengers for each polling location. (N.M. Stat. Ann. § 1-2-21; also see § 1-2-23, 1-2-25). An election-related organization may appoint watchers in a county. Any group of three candidates for elected office may appoint watchers in a county. (N.M. Stat. Ann. § 1-2-27; also see 1-2-25). Challengers and watchers shall be voters of a precinct located in that county to which they are appointed. (N.M. Stat. Ann. § 1-2-22).	Penna.	Each candidate for nomination or election at any election shall be entitled to appoint two watchers for each election district in which such candidate is voted for. Each political party and each political body which has nominated candidates in accordance with the provisions of this act, shall be entitled to appoint three watchers at any general, municipal or special election for each election district in which the candidates of such party or political body are to be voted for. Such watchers shall serve without expense to the county. Each watcher so appointed must be a qualified registered elector of the county in which the election district for which the watcher was appointed is located. (25 P.S. § 2687).
New York	At any general, special, town or village election, any party committee or independent body whose candidates are upon the ballot, and at any primary election, any two or more candidates and any political committee may have for each election district three watchers at any one time, not more than one of whom may be within the guard rail at any one time. Watchers shall be appointed by the chairman of any such party, committee or independent body or by the candidates. Each watcher must be a qualified voter of the city or county in which he is to serve (N.Y. Election Law § 8-500).	Rhode Is.	The officers required to furnish and equip any voting place shall also provide a table in the room where the voting is conducted, outside the enclosed space near the first bipartisan pair of supervisors, at which a representative of each recognized political party bearing credentials signed by the proper ward or town committee chairperson, shall be allowed to sit for the purpose of keeping track of those who are voting, and these representatives, who shall be known as "checkers," may be changed during the day. A representative, known as a "runner," of each of the parties shall be allowed to come to the table at frequent intervals for the purpose of taking whatever list or memoranda the checkers may wish to give the runner. A representative of each recognized political party bearing credentials signed by the proper ward or town committee chairperson, shall also be allowed outside the enclosed place to observe the voting and assist the checkers, and these representatives shall be known as "watchers." (R.I. Gen. Laws § 17-19-22).
N. Carolina	The chair of each political party in the county shall have the right to designate two observers to attend each voting place at each primary and election and such observers may, at the option of the designating party chair, be relieved during the day of the primary or election after serving no less than four hours and provided the list required by this section to be filed by each chair contains the names of all persons authorized to represent such chair's political party. Not more than two observers from the same political party shall be permitted in the voting enclosure at any time. Persons appointed as observers must be registered voters of the county for which appointed and must have good moral character. (N.C. Gen. Stat. § 163.45). See N.C. Gen. Stat. § 163.166.3 for information on individuals who may be in the polling place.	S. Carolina	Each candidate who is not unopposed in a primary and each nonpartisan candidate, including announced write-in candidates in a general or special election, may appoint a watcher for any voting place where his name appears on the ballot. However, in any general or special election, all candidates who are certified by a political party must be jointly represented at each polling place by not more than two watchers from the party for each one thousand registered voters or fraction thereof registered at the polling place. Each watcher appointed hereunder must be a qualified voter in the county where he is to watch. (S.C. Code Ann. § 7-13-860).
N. Dakota	Three poll challengers appointed by the district chairman of each political party represented on the election board are entitled to be in attendance at each polling place. (N.D. Cent. Code § 16.1-05-06).	S. Dakota	At least one poll watcher for each political party, one poll watcher for each independent candidate, one poll watcher for each slate of presidential electors, and one poll watcher for each side of any ballot issue to be voted on may be present at each polling place for general elections. (Administrative Rule 5:02:12:02). Any person, except a candidate who is on the ballot being voted on at that polling place, may be present at any polling place for the purpose of observing the voting process. (S.D. Codified Laws § 12-18-9).
Ohio	At any primary, special, or general election, any political party supporting candidates to be voted upon at such election and any group of five or more candidates may appoint to the board of elections or to any of the precincts in the county or city one person, a qualified elector, who shall serve as observer for such party or such candidates during the casting and counting of the ballots; provided that separate observers may be appointed to serve during the casting and during the counting of the ballots. (Ohio Rev. Code Ann. § 3505.19).	Tennessee	Each political party and any organization of citizens interested in a question on the ballot or interested in preserving the purity of elections and
Oklahoma	Any candidate or any recognized political party shall be entitled to have a watcher present at any place where an official count is being conducted.		

in guarding against abuse of the elective franchise may appoint poll watchers. The county election commission may require organizations to produce evidence that they are entitled to appoint watchers. All appointed poll watchers must have reached the age of seventeen (17) by election day. Each political party which has candidates in the election and each citizens' organization may have two (2) watchers at each polling place. One (1) of the watchers representing a party may be appointed by the chair of the county executive committee of the party and the other by a majority of the candidates of that party running exclusively within the county in which the watchers are appointed. (Tenn. Code. Ann. § 2-7-104). See Tenn. Code. Ann. § 2-7-103 for information on individuals allowed to be in the polling place.

Texas "Watcher" means a person appointed to observe the conduct of an election on behalf of a candidate, a political party, or the proponents or opponents of a measure. (Tex. Elections Code Ann. § 33.001). See Texas Secretary of State Poll Watcher's Guide.

Utah For each regular general election or statewide special election, and for each regular primary and Western States Presidential Primary, each registered political party and any person interested in a ballot proposition appearing on the ballot may appoint one person to act as a voting poll watcher to observe the casting of ballots, another person to act as a counting poll watcher to observe the counting of ballots, and another person to act as an inspecting poll watcher to inspect the condition and observe the securing of ballot packages. (Utah Code Ann. § 20A-3-301).

Vermont Each organized political party, each candidate on the ballot not representing an organized political party, and each committee supporting or opposing any public question on the ballot shall have the right to have not more than two representatives outside the guardrail for the purpose of observing the voting process and challenging the right of any person to vote. (Vt. Stat. Ann. tit. 17, § 2564).

Virginia The officers of election shall permit one authorized representative of each political party or independent candidate in a general or special election, or one authorized representative of each candidate in a primary election, to remain in the room in which the election is being conducted at all times. The officers of election shall have discretion to permit up to three authorized representatives of each political party or independent candidate in a general or special election, or up to three authorized representatives of each candidate in a primary election, to remain in the room in which the election is being conducted. Each authorized representative shall be a qualified voter of any jurisdiction of the Commonwealth. (Va. Code Ann. § 24.2-604). A local electoral board may authorize in writing the presence of additional neutral observers as it deems appropriate subject to restrictions. (Va. Code Ann. § 24.2-604).

Wyoming The county chairman of each political party may certify poll watchers prior to the day of the election to serve in each precinct. Not more than one (1) poll watcher from each political party may serve

simultaneously unless the chief judge determines that one (1) additional poll watcher from each political party may be accommodated in the polling premises without disrupting the polling process. A poll watcher shall belong to the political party he represents and shall be a registered elector residing in the county. (Wyo. Stat. Ann. § 22-15-109)

The following 27 states which election law limits appointment of poll watchers in a general election to parties only are:

- Alaska
- Arizona
- Colorado
- Delaware
- Georgia
- Hawaii
- Illinois
- Iowa
- Kentucky
- Maine
- Massachusetts
- Michigan
- Missouri
- Montana
- New Hampshire
- New Jersey
- New Mexico
- New York
- North Carolina
- North Dakota
- Rhode Island
- South Carolina
- South Dakota
- Virginia
- Tennessee
- Utah
- Wyoming

The following 12 states which election law allows candidates to appoint poll watchers in addition to political parties are:

- Alabama
- Arkansas
- Florida
- Idaho
- Indiana (limited to certain candidates only)
- Maryland
- Mississippi
- Ohio (limited to group of five candidates)
- Oklahoma
- Pennsylvania
- Texas
- Vermont

These 18 states maintain "poll books" of voters who cast ballots:

- California
- Colorado
- Georgia
- Illinois
- Indiana
- Iowa
- Kansas
- Maryland
- Michigan
- North Carolina
- North Dakota
- Ohio
- Pennsylvania

South Carolina
South Dakota
Tennessee
Utah
West Virginia

Part V. NCOPO

Explanatory Comment

This Part concerns the Trust's administration of the National Conference of Public Officials, Inc., a federally registered standards development organization primarily addressing government ethics, accountability and productivity to protect civil rights secured by law.

Rule 10 NCOPO.

(a) **Scope.** — The scope of this Rule is administration by the Trustee of the National Conference of Public Officials, Inc., (“NCOPO”) a non-profit, non-stock Pennsylvania corporation organized October 31, 2006 of which Part V of the Trust IOPs shall constitute the bylaws of the nonprofit corporation.

(b) **Purpose .** —

- (1) The National Conference of Public Officials, Inc. (“NCOPO” or the “Conference”) is a Federally protected Standards Development Organization (“SDO”) pursuant to the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.*, and is established to promote government ethics, accountability and productivity to protect civil rights secured by law by drafting by voluntary consensus uniform (model) codes and standards for governments to adopt as statutes, ordinances or regulations by Qualified Beneficiaries and Current Beneficiaries of the Trust.
- (2) The evident need of developing such government ethics, accountability and productivity is demonstrated by the necessity of establishing the Trust to protect civil rights secured by law, since the existing political structure of Qualified and Current beneficiaries of the Trust was not protecting such civil rights secured by law.
- (3) The Conference may be referred to by its short name “National Conference of Public Officials” or by its acronym “NCOPO.”
- (4) The offices of the Conference shall be the offices of the Trust.

(c) **Programs .** — The Conference accomplishes its purpose by the issuance of Uniform Codes and Standards, interpreted and enforced by Advisory Opinions and Oversight Determinations and recognized by accreditation and certification of Qualified Beneficiaries and Current Beneficiaries of the Trust satisfying such objectives.

(d) **Uniform Codes and Standards Mission Statement .** — The NCOPO Uniform Codes and Standards are to satisfy fundamental due process of fairness by assuring public's justified demands for

government ethics, accountability and productivity are effectuated by explicit, obtainable benchmarks, not by impermissibly delegating policy decision-making to competing interests, such as political opponents or the media for resolution by ad hoc and subjective arbitrary and discriminatory application. By affording the public official the reasonable opportunity to distinguish between preferable and discouraged or prohibited conduct so he may act accordingly, NCOPO Uniform Codes and Standards are to promote the reasonable degree of certainty in applying the rule of reason to ethics, accountability and productivity. Moreover, NCOPO Uniform Codes and Standards are to foster fuller First Amendment exercises of speech and petition through delineated boundaries of preferable conduct without the fear of arbitrary and discriminatory condemnation.

(e) **Eligibility.** — In pursuing such purposes, the Conference shall not act so as to impair its eligibility for exemption under Section 501(c)(4) of the Internal Revenue Code of 1986 as amended, 26 U.S.C. § 501(c)(4); or antitrust protection pursuant to the National Cooperative Research and Production Act of 1993 as amended by Standards Development Organization Advancement Act of 2004, 15 U.S.C. § 4301 *et seq.*

(f) **Model Code of Official Conduct Incorporation by Reference .** — The Conference declares that it has the inherent and exclusive powers to supervise the conduct of its members, the Qualified Beneficiaries and Current Beneficiaries of the Trust, who by voluntarily joining the Conference, subscribe to its precepts of fostering government ethics, accountability and productivity. In furtherance thereof, the Model Code of Official Conduct shall be made a part of these Bylaws by incorporation by reference, and shall be fully enforced as is fully specified herein.

(g) **Membership .** —

- (1) *General rule.* Conference membership are entitled to cast a vote for independent auditors and final drafts of Uniform Codes and Standards, and in any panel on business thereto and shall be open without consideration on account of age, race, ethnic background, sex or physical disability, to all natural persons who are the Qualified Beneficiaries or the Current Beneficiaries of the Trust who
 - (A) possess a certificate of election to public office of the legislative, executive or judicial branch of the Federal, state, county or municipal government; or

- political party office of a political party as defined under the Federal Elections Campaign Act, 2 U.S.C. § 431(16), regardless of the nature of compensation or emoluments, if any; or
- (B) any person appointed to a governing body of an authority, commission, panel, tribunal (administrative law or judicial) or to a court of law or any similar entity; and
- (C) any person who has held any of the aforementioned public offices.
- (2) *Membership rights.* The rights and privileges enumerated herein are subject to payment of properly established membership dues as the Trustee may from time to time establish and subscription to the Model Code of Official Conduct, as required under this Part.
- (3) *Compensation prohibited.* In that the peer consensus standard development process is at all times voluntary, no member shall accept any compensation for any service, but a member may be entitled to reimbursement of reasonably incurred out-of-pocket expenses.
- (4) *Privacy of membership information.* Distribution of membership registration information, including addresses, phone numbers, and email addresses for any use other than for Conference matters is prohibited.
- (5) *Expulsion or suspension.* No member shall be expelled or suspended or admission to membership be denied, except for cause as provided under this Rule and in accordance with due process that is fair and reasonable and carried out in good faith with full notice and a fair and full opportunity to be heard and be represented by counsel.
- (6) *Grounds for expulsion or suspension.* Membership may be suspended or terminated or admission to membership be denied upon proof of preponderance of evidence of such a finding of fact by the appropriate authority of the following acts or omissions in violation of
- (A) any Federal or state statute governing civil rights; the Federal False Claims Act or similar state qui tam statute or any Federal or state statute governing the conduct of elections or campaign finance reporting; or
- (B) failing to properly or timely file any public ethics or financial disclosure statement; or
- (C) any violation of a statute, regulation or rule that promulgates ethics or standards of official conduct; or
- (D) has been properly convicted in accordance with due process of law of an infamous felony or *crimen falsi* involving the public trust; or
- (E) has been properly found to be in violation of any provision of an official adoption of the Model Code of Official Conduct or the ABA Model Code of Judicial Conduct, whichever is applicable which such violation requires censure or removal.
- (7) *Voluntary suspension.* Nothing within this Rule shall preclude any member from voluntarily suspending his participation in the affairs of the Conference pending resolution of any adjudicative proceeding before a judicial tribunal or regulatory authority or notice of the pendency of an investigation or indictment by prosecutorial authorities, such conduct be properly expected thereto of the member.
- (h) **Governance.** — Any matter not expressly provided under this Rule shall be governed by the Model Code of Official Conduct.
- (i) **Conflicts of Interest, Disclosure Required, Recusal from Vote .** — A conflict of interest may exist when the interest or activities of any employee or member may be seen as competing with the interests of the Conference, or the above derives a financial or other material gain as a result or a direct or indirect relationship. Any possible conflict of interest shall be disclosed to the Trustee and the Chairman by the person concerned. When any conflict of interest related to a matter requiring action by the Conference or any panel thereof, the interested person shall not vote on the matter, and unless so waived by the Chairman, shall retire from the Session and not participate in any deliberation or decision regarding the matter under consideration, all which shall be spread upon the record. Any matter not covered by this subdivision shall be governed by the Model Code of Official Conduct.
- (j) **Seal, Trademark, Flag .** — The trademark of the Conference shall consist of the allegorical image of the American eagle over the union crest encircled by 50 stars bottomed by the year of incorporation in Roman Numerals with the trade name of the Conference in the outer inscription accompanied by the Latin phrase “Res Publica.” The seal shall be incorporated in a field of emerald green for the Conference standard. At no time shall the official seal, trademark, or standard of the Conference be used for any use not expressly authorized by these Rules.
- (k) **Liability and Indemnification .** —

- (1) *General rule.* No member nor the Trustee shall be personally liable for monetary damages as a member or Officer or Trustee for any action taken, or any failure to take any action unless:
 - (A) The member or the Trustee has breached or failed to perform the duties of member or Officer or Trustee in accordance with the standards of conduct contained in Section 5712 of the Pennsylvania Associations Code, 15 Pa.C.S. § 5712, and any amendments and successor acts thereto; and
 - (B) The breach or failure to perform constitutes self-dealing, willful misconduct or recklessness; Provided however, the foregoing provision shall not apply to responsibility or liability of a Director or Officer or Trustee pursuant to any criminal statute or the liability of a Director or Officer or Trustee for the payment of taxes pursuant to local, state or federal law.
- (2) *Indemnification.* The Conference shall indemnify any member or the Trustee, or any other employee of the Conference who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative, (and whether or not by, or in the right of, the Conference) by reason of the fact that such person is or was a representative of the Conference, against expenses, including attorney's fees, judgments, fines and amounts paid in settlement actually and reasonably incurred in connection with such action or proceeding if such person acted in good faith and in a manner he or she reasonable believed to be in, or not opposed to, the best interests of the Conference, and with respect to any criminal proceeding, had not reason to believe that such conduct was illegal, provided that, no person shall be entitled to indemnification pursuant to this Rule in any instance in which the action or failure to take action giving rise to the claim for indemnification is determined by a court to have constituted willful misconduct or recklessness; and further provided that, in instances of a claim by or in the right of the Conference, indemnification shall not be made under this section in respect of any claim, issue or matter as to which the person has been adjudged to be liable to the Conference unless and only to the extent that the court of common pleas of the judicial district embracing the county in which the registered office of the Conference is located or the court in which the action was brought determines upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses that the court of common pleas or other court shall deem proper.
- (3) *Procedure.* Unless ordered by a court, any indemnification under the aforementioned section or otherwise permitted by law shall be made by the Conference only as authorized in the specific case upon a determination that indemnification is proper in the circumstances because he or she has met the applicable standard of conduct set forth under that section. Such determination shall be made:
 - (A) By the Trustee or by a majority vote of a quorum of members of the Conference who were not parties to the action or proceeding; or
 - (B) If such quorum is not obtainable or if obtainable and a majority vote of a quorum of disinterested members so directs, by legal counsel in a written opinion.
- (4) *Advancement of Expenses.* Expenses incurred by a person entitled to indemnification pursuant to this Rule or otherwise permitted by law in defending a civil or criminal action, suit or proceeding shall, in any required by this Rule, and may, in any other case, be paid by the Conference in advance of the final disposition of such action, suit, or proceeding upon receipt of an undertaking by or on behalf of such person to repay the amount so advanced if shall ultimately be determined that such person is not entitled to be indemnified by the Conference.
- (5) *Continuing Right to Indemnification.* Expenses incurred by a person entitled to indemnification pursuant to this Rule or otherwise permitted by law in defending a civil or criminal action, suit or proceeding shall, in any required by this Rule, and may, in any other case, be paid by the Conference in advance of the final disposition of such action, suit, or proceeding upon receipt of an undertaking by or on behalf of such person to repay the amount so advanced if shall ultimately be determined that such person is not entitled to be indemnified by the Conference.
- (6) *Other Rights.* This subsection of this Rule shall not be exclusive of any other right which the Conference may have to indemnify any person as a matter of law.

(I) **Definitions .** — The following terms shall have the following meaning, unless the content clearly indicates otherwise:

- (1) **ADVISORY OPINION:** an “Advisory Opinion” shall mean any interpretation of the application of the Uniform Codes and Standards to a particular set of facts.
- (2) **ADVISORY OPINION REQUEST:** an “Advisory Opinion Request” is the requesting instrument that initiates the Advisory Opinion Process proceeding.
- (3) **APPOINTMENT ONCE REMOVED:** an “appointment once removed” means an appointment by a public officeholder who was appointed by an elected public officeholder as required by law.
- (4) **APPROPRIATE AUTHORITY:** an “appropriate authority” for purposes of the Model Code of Official Conduct as officially adopted, shall mean that legislative, executive or judicial body charged by law, rule or regulation to enforce the official adoption of the Model Code of Official Conduct.
- (5) **AUTHORIZED CANDIDATE’S COMMITTEE:** an “authorized candidate’s committee” shall mean such as defined under the Federal Elections Campaign Act, 2 U.S.C. § 431(4).
- (6) **BODY POLITIC:** a “Body Politic” shall mean be a legislative, executive or judicial body established by constitution or other organic law or by statute for the purpose of general or special governmental purpose.
- (7) **CODE:** a “Code” shall mean a standard that is an extensive compilation of provisions covering ethics, accountability or productivity suitable for adoption into rule or law independently of other codes and standards. Codes proposed by the Conference are not intended to be general statutory provisions, but are primarily concerned with the regulation of conduct of public officeholders and officials in the discharge of their duties.
- (8) **DRAFT:** A proposed Uniform Code, Standard, or Advisory Opinion being prepared by the Trustee or a panel so designated by the Board.
- (9) **GENERAL POLICY RECOMMENDATIONS:** a “General Policy Recommendation” is an informal equivalent of an Advisory Opinion initiated and proposed by any Section, but without the formal hearing and review process required of an Advisory Opinion, drafted as a statement to memorialize the intent of the Conference or a part thereof.
- (10) **INDEPENDENTLY VERIFIABLE BENCHMARKS:** “independently verifiable benchmarks” shall mean such measures within a Uniform Code

or Standard that enables satisfaction of such to be confirmed by independent audit or examination.

- (11) **NOTICE TO DEVELOP:** a “Notice to Develop” is the proposing instrument that initiates a formal Standards Development Process proceeding to draft a Uniform Code or Standard.
- (12) **OFFICIAL ADOPTION:** a “Official Adoption” is an adoption of any Model Code or Standard by a legislative body, executive authority, including any agency, board, commission, or department, or a court, irregardless of any modifications thereto.
- (13) **PANEL:** a “panel” is that part of the Voting Membership, consisting of three, five or seven members designated by the Chairman, for the primary responsibility of performing all Conferences matters not reserved to the Trustee.
- (14) **POLITICAL PARTY:** a “political party” shall mean as such is as defined under the Federal Elections Campaign Act, 2 U.S.C. § 431(16).
- (15) **POLITICAL PARTY OFFICIAL:** a “political party official” shall mean one is regularly elected as provided by state law as a member of a national, state, municipal, ward, district, division or precinct committee or of regularly established political party or is elected by a body of elected political party officials thereto.
- (16) **PUBLIC OFFICEHOLDER:** a “public officeholder (official)” shall mean a person who is elected or appointed to perform duties of grave and important character, and which involve some function of government, for a definite term in a manner provided by law, and exercised for the benefit of the public for a fixed compensation or emolument by fees paid out of the public treasury.
- (17) **REGULARLY ESTABLISHED POLITICAL PARTY:** a “generally recognized political party” shall mean as is defined under the Federal Elections Campaign Act, 2 U.S.C. § 431(16), and primarily refers to either the Democratic or Republican Party, but not necessarily minor political parties, unless the context clearly requires inclusion of such minor political parties.
- (18) **SDO:** a “SDO” is an acronym for “Standards Development Organization,” a nonprofit organization that publishes consensus developed standards, usually recognized by the American National Standards Institute (“ANSI”). The Conference is a SDO.
- (19) **STAKEHOLDER:** a “Stakeholder” is any person who has an interest in the outcome of any Standards Development, Advisory Opinion or

Oversight Process. A stakeholder who is a PARTY has a direct material interest, a PARTY IN INTEREST has general public interest in the outcome of any particular proceeding.

- (20) TRUSTEE: the “Trustee” is the Trustee of the Lincoln Charitable Trust, of which the Trust Instrument provides for the establishment and maintenance of the Conference.

Explanatory Comment

I. Manner of Participation.

The Conference conducts all of its business electronically, due to the insurmountable expense of physically gathering thousands of elected public officials in one location. Electronic participation assures greater accessibility to a broad cross-section of members, many who as municipal and county level officeholders would otherwise be unable to incur the expense of attending a national convention. The only other national gatherings of political persons are the national conventions of the political parties, which expense to host is in the millions of dollars and is done only quarterly. While the Trustee which does meet physically is vested with greater authority, the greater accessibility to all Voting Members due to the Internet assures an adequate check and balance to the Trustee.

II. Membership.

The Conference is entitled to preclude elected officeholders whose conduct is already established as being inconsistent with the Model Code of Official Conduct, or which would otherwise constitute for cause for suspension or termination. However, such disciplinary action must be commenced by the appropriate authority, not the Conference, as the appropriate authority is more fully competent to adjudicate such allegations of misconduct.

The clause “properly convicted in accordance with due process of law” within subsection (b)(6) is intended to recognize victims of bad faith prosecutions and in certain instances, selective prosecutions. *See generally, Dombrowski v. Pfister*, 380 U.S. 479 (1965) and *Amsterdam, Criminal Prosecutions Affecting Federally Guaranteed Civil Rights: Federal Removal and Habeas Corpus Jurisdiction to Abort State Court Trial*, 113 U. of Pa. L. Rev 793 (1963).

It is understood that many elected officeholders escape the consequences of abuse of office and other offenses namely by the fraternal cloak resulting from the collegiality of, for example, the bench and bar. The final clause of the for cause provision is not intended as a “catch-all” to snag unwary members, but as a means to reach the illegal conduct that escape prosecution due to influence or favoritism by political “factions or local spirits” or self-serving interests. *Cf. Imbler v. Pachtman*, 424 U.S. 409, 429 (1976) anticipating that prosecutors are amenable to “professional discipline by an association of his peers” as sufficient incentive to avoid violating constitutional rights.

The clause regarding refusal to allow Board mediation or arbitration is in furtherance of the Conference’s self-declared inherent and exclusive powers to supervise the conduct of its members who by voluntarily joining the Conference, subscribe to its precepts. Various provisions throughout the Bylaws grant the Trustee license to intervene in proceedings for the purpose of fostering government ethics, accountability and productivity. Grounds for such participation are nonetheless narrowly tailored under these IOPs which at all times remains subject to the exercise of judicious discretion by the Board.

III. Definitions

The standards development process, like any particular discipline, has its own terms of art. Many of these terms are

employed either to distinguish a particular stage of the process or right due under ANSI practice. Care should be exercised to assure that a term of art, which may carry similar meaning in other fields of law, is not necessarily confused or use interchangeably with similar usages. Examples are “Accreditation” which under these Bylaws, refers to a specific program to provide recognition only after satisfying various prerequisites consistent with the Conference’s purposes, or “Adoption by Enactment” when used within these Bylaws conveys a specific meaning relevant to the Conference’s purposes and which is not intended to mean anything more than which its definition as limited under these Bylaws. It is furthermore understood that these definitions as provided under this Rule is limited to only the Conference and its affairs. Such definitions do not survive outside the purposes of the Conference. Members and the general public should be fully informed as to the meanings of these various terms of art and employ such definitions in the limited context to which such definitions are applied.

Rule 11 Panel Code Drafting Procedures.

- (a) **Scope.** — The scope of this Rule is relative to the governance of each drafting panel. The provisions within this Rule are to be liberally construed for the purpose of allowing each panel to govern itself to the fullest extent possible in light of the fact that participation in Conference and its panels are voluntary. The provisions within this Rule relative to procedure are to be strictly construed for the purpose of assuring due process.

Part I. Business of the Panels.

- (b) **Panels, Membership, Powers and Duties.** — The Trustee Chairman may appoint from among any Member a three or five member panel to consider and act upon any matter not expressly reserved to the Conference; *provided that*, not all members shall be of the same political party; *and further provided*, that the panel shall not override or vote in conflict with precedent established by the Conference. Any panel member dissenting from any decision of the panel, or any aggrieved party may petition for re-argument before the Conference on the grounds provided as factors considered for allowance of appeal for discretionary appeals.

(c) **Procedure for Empaneling.** —

- (1) *Choice of Panel Assignments.* Each Member upon application for membership into the Conference shall indicate his choice of panel assignments. Any Member may at his discretion go online and indicate his desire to transfer out of a panel on to another panel. The Chairman shall not withhold reasonable approval of the panel assignment or transfer requested by the Member.
- (2) *Panels may be limited to political subdivisions.* Notwithstanding subdivision (1), certain panels as constituted by the Trustee shall be limited to the respective political subdivision, to be evenly divided between the respective political parties if at all possible, but in any respect no greater than the proportion of party registration within the respective political subdivision.
- (3) *Panel meetings open to public.* All panel meetings of the Conference shall be open to the general public via the National Conference Calls as provided in IOP Rule 7, except upon call of the Panel Chairman enter into Executive Session limited only to members of the panel for purposes of discussing matters which are privileged under law. All matters governing a conflict of interest or the appearance of a conflict of interest shall be governed by the Model Code of Official Conduct.

- (4) Those panels charged with drafting, amending, marking up or revising Model Codes and Standards or with drafting and issuing Advisory Opinions shall be appointed by the Trustee upon request of any Member thereto for such time period as defined which shall be known as the panel's Term.
- (5) *Reimbursement of expenses.* Each Panel member therein physically attending a panel meeting or hearing in lieu of participating by the National Conference Call under IOP Rule 7 shall be advanced to cover or reimbursed for reasonably incurred expenses for and only for:
- (A) first class air travel to and from his domicile to the Conference's general offices of such other place as the Chairman may have designated for the meeting or hearing if such location exceeds one hundred miles distance and reimbursement of car rental or tax expenses; or
- (B) reimbursement for out-of-pocket expenses actually documented by receipt for purchase of fuel and payment of tolls; and
- (C) hotel accommodation for the night prior, and if the meeting or hearing extends past five o'clock post meridian, for hotel accommodation for the night forthcoming.
- (6) *Agenda for Panel Meetings.* All panels shall convene at Twelve o'clock noon on a Friday, in accordance with the Uniform Meeting Scheduling as set forth under this Part and its agenda shall be as follows:
- (A) **CALL TO ORDER:** The panel chairman, or in his absence the chairman *Pro Tempore*, shall call the meeting to order. The panel chairman shall establish that a quorum is present to conduct business.
- (B) **PUBLIC COMMENT:** The panel chairman shall inquire if there is any person of the general public desiring to be heard on reports therein pending before the panel, to which the panel chairman at his discretion, may fix a reasonable time limit on such comment to accommodate the order and decorum.
- (C) **ORAL ARGUMENTS AND TESTIMONY REGARDING ACCEPTANCE OF DRAFTS OF MODEL CODES AND STANDARDS, ADVISORY OPINIONS, INTERPRETATIONS, ENFORCEMENT AND OVERSIGHT DETERMINATIONS:** The panel shall hear oral arguments as therein scheduled consideration of Drafts of Model Codes and Standards, Advisory Opinions, or

Interpretations therein referred to the panel by the Chairman.

- (D) **MARKUP AND ACCEPTANCE OF DRAFTS OF MODEL CODES AND STANDARDS, ADVISORY OPINIONS, INTERPRETATIONS, ENFORCEMENT AND OVERSIGHT DETERMINATIONS:** The panel shall act upon any pending draft of any Model Code or Standards, Advisory Opinion or Interpretation therein referred to the panel by the Chairman.
- (E) **NOTICE OF RIGHT OF APPEAL:** The panel chairman shall spread upon the record notice of the right of appeal by any person so aggrieved by the adoption of any report, commendation or memorialization, to the Conference.
- (F) **ADJOURNMENT:** The panel chairman shall determine whatever matters the Panel desires or is required to be heard at its next meeting and therein upon motion, adjourn until the appointed time.
- (7) **Powers and duties of Panel Chairman.** The chairman of the respective panel shall at all times be responsible for all aspects of the administration and assure the expeditious and efficient consideration of the matter so assigned to the panel, which shall include, but not be limited to:
 - (A) Being fully informed of all matters assigned to his respective panel.
 - (B) Assuring the prompt scheduling of the appropriate hearing or proceeding within thirty (30) days assignment for disposition so expected or required, unless a rule within these Bylaws prescribe a shorter period of time.
 - (C) Assuring the delivery to each member of the panel, all correspondence, drafts, initial public comments, reports, and all submittals assigned to the panel.
 - (D) Assigning to any member of the panel any assignment or delegation of duty, such as the drafting or markup of a draft of the Model Code or Standard, or the writing of any Advisory Opinion or the conduct of any research, interview of witnesses, or examination of places and things, and expeditiously report the same back to the respective committee, panel, or section.
 - (E) Otherwise making himself available for the Trustee for advice and consent.
 - (F) Exercise all other general supervisory powers agreeable to the membership and otherwise commonly and legally associated with service as the presiding

officer.

- (8) **Appointment of Chairman Pro Tempore.** If the chairman knows prior to the time the panel is scheduled to convene, regardless or not whether a quorum is present, of his own absence or tardiness, he shall designate a member within the panel to act as the chairman *pro tempore* to preside over the proceeding in his absence, or until the chairman arrives and assumes responsibility thereto; such designation shall be reduced to writing by correspondence or by email, served upon the secretary or reporter of the respective panel, carbon copy served onto the Secretary.
- (9) **Secretary.**
 - (A) The secretary or reporter of the respective panel shall file within twenty-four (24) hours the minutes of the panel meeting, on an electronic form provided at the Conference website, unless the minutes are voluminous, then a written copy shall be filed by overnight delivery service.
 - (B) The secretary or reporter shall file within twenty-four (24) hours the request for any reimbursement of expenses by members as authorized by this Rule and the disbursements of vouchers and payment of same to the respective member.
 - (C) If a hearing or other regularly scheduled proceeding as required by this Rule do not come to pass by act or omission to act by the chairman, such as the prompt scheduling of a meeting or designation of a place to meet, or the delivery of various drafts, etc., required to discharge the panel's powers and duties, the secretary shall appoint a chairman *pro tempore* to act in the place of the chairman until such time the chairman assumes the duties and remedies the acts or omissions thereto, or appoints a chairman *pro tempore* to act in his stead.

Part II. Editorial Provisions.

- (d) **Editorial Preparation of Drafts.** — The following procedures, as developed under the supervision of the Printer shall be used for the editorial preparation and dissemination of various drafts of Model Codes and Standards, Advisory Opinions, General Policy Recommendations and other Conference publications:
 - (1) **LIGHT FACE BRACKETS:** [Light face brackets] shall be used only in drafts amending an existing Model Code or Standard or a Second or subsequent Draft of an Model Code or Standard. Such indicates that anything enclosed thereby appears in the existing

language, but that it is proposed to omit it from the language as amended. The brackets and anything enclosed by them are carried along into all subsequent drafts, so that the reader of the draft can ascertain the content which is proposed to be removed.

- (2) **UNDERSCORING:** Underscoring is used only in drafts of Second or Subsequent Drafts of Model Codes or Standards. It indicates that the underscored matter does not appear in the existing Code or draft, but that it is proposed to insert it in the draft as amended. The underscored matter will be carried into the Model Code or Standard if it is finally enacted.
 - (3) **ELLIPSES:** Ellipses (* * *) are used only in drafts amending an existing draft. They indicate omitted text which is not proposed to be changed in the draft of the Model Code or Standard.
 - (4) **DARK FACED BRACKETS:** [Dark] face brackets are used only in drafts that have been amended, either in panel or on appeal before the Conference. They indicate brackets inserted by such amendment and have the same effect as light face brackets.
 - (5) **STRIKE OUT TYPE:** ~~Strike out type~~ is used only in drafts that have been amended either in panel or on appeal before an appellate panel or the Conference. They indicate that anything so printed appeared in a previous print of the draft but is to be deleted, and will not appear in the text of the Model Code or Standard if it is finally enacted.
 - (6) **CAPITAL LETTERS:** CAPITAL LETTERS are used only in drafts that have been amended, either in panel or on appeal before an appellate panel or the Conference. They indicate that the matter in capital letters did not appear in the original version of the draft, but was inserted into the draft by amendment by the Committee or on appeal. The matter in capital letters will be carried into the Model Code or Standard if it is finally enacted in ordinary print, unless it is also underscored, in which case it will be printed in italics.
 - (7) **STRIKE OUT TYPE AND CAPITAL LETTERS:** ~~Strike out type~~ and CAPITAL LETTERS indicate only amendments made to the Model Code or Standard at the last previous Draft. All prior ~~strike out amendments~~ are dropped entirely from the new print and all insert amendments previously shown in CAPITAL LETTERS are reset in lower case type.
- (e) **Division of Text.** — Each Model Code or Standard shall be divided as follows:
- (1) Part I, II, III, *et seq.*
 - (2) Subpart A, B, C, *et seq.*
 - (3) Chapter 1, 2, 3, *et seq.* except that all chapters shall be enumerated singularly regardless of

- whatever part or subpart they may be within.
- (4) Subchapter A, B, C. *et seq.*
- (5) Section (§) 101, § 102, § 103, *et seq.*, except that within Model Codes or Standards applicable to the Judicial Branch, a section may instead be cited as a Rule.
- (6) Subsection (a), (b), (c) *et seq.*
- (7) subdivision (1), (2), (3), *et seq.*

(f) Preparation of Comment, History and Cross References. —

- (1) In all drafts and upon publication of the Fifth & Final Draft, each applicable part, subpart, chapter or section shall have annexed and incorporated by reference a COMMENT which provides guidance as the draftsmen's intent and considerations. While such COMMENT shall not be binding, it shall serve as an interpretative aid in providing a narrative of the development of the language. The COMMENT shall appear in type font size at least two points smaller than the text.
- (2) Upon publication of the Final Draft, there shall also be a legislative history and cross reference notations which shall appear in the same manner as the COMMENT.

(g) Concurrence or Dissent. — The COMMENT shall reflect whether any such members of the respective panel or committee elected to concur in the result only or dissented from the final draft of the COMMENT.

(h) Contents of Comment. — The COMMENT shall include, but not be limited to, discussions of:

- (1) The evil to which the pertinent provision of the Model Code or Standard was sought to address and remedy.
- (2) The viewpoints of various parties and parties in interests whether pertinent to the adoption of any particular course of action therein within the provision.
- (3) Generic examples to which the panel or committee anticipates the pertinent provision would be applied and the result therein envisioned by the panel or committee.
- (4) Any other essential and relevant factors which would aid the bodies politic in the consideration of adoption by enactment and by a court of law in construing the intent thereto.

(i) Editorial Style of Comment. — The COMMENT shall be written to the fullest extent with brevity, clarity and conciseness as the occurrence will allow.

Rule 12 Model Codes and Standards, Advisory Opinions, Mediation Services.

- (a) Model Codes and Standards.** — The Conference by and through its panels shall conduct research and issue MODEL CODES AND STANDARDS, the purpose being to develop through consensus development

model codes and standards which is to specify the minimum criteria addressing government ethics, accountability or productivity developed through a consensus development process approved by the American National Standards Institute (“ANSI”) or similar entity.

(b) Advisory Opinions and Interpretations. — The Conference by and through its respective panels shall upon due deliberation issue ADVISORY OPINIONS AND INTERPRETATIONS, the purpose being to develop through consensus development guidance relative the enactment, interpretation and promulgation of the various Model Codes and Standards published by the Conference.

(c) Nonpartisan Mediation. — The Conference by and through its respective panels or by other means as designated by the Trustee provide additional technical advice and assistance as authorized by the Internal Revenue Code, 26 U.S.C. [IRC] § 4945(d)-(e), including non-partisan mediation, among co-beneficiaries relative the enactment, interpretation and promulgation of the various Model Codes and Standards published by the Conference. All such mediation shall be governed by the rules of the American Arbitration Association when not in conflict with these Rules. All such mediation shall be privileged and confidential pursuant to 42 Pa.C.S. § 5949(a).

(d) Requirements for Model Codes. —

(1) *General rule.* The Conference shall develop all Model Codes and Standards under the following requirements as set forth within this Part pursuant to the direction and guidance of the ANSI and its standards for accreditation and other governance directives.

(2) *Openness.* Participation in the Model Code and Standards process is and shall at all times be open to all persons who are directly and materially affected by the activity, without regard to country of citizenship or residence. The hearings and meetings of the respective panels for the consideration of Model Codes and Standards actions shall always be open to the general public.

(3) *Transparency.* The Conference shall provide early notification of initiation of Model Code and Standards process and notice of all related activities is provided in order to allow all interested parties to express interest in participating. Widely available notification of status of Model Code and Standards activities as well as proposals is provided in order to permit review and comment by interested parties.

(4) *Balance of interest.* The Model Code and Standards development process should have a balance of interests, so that the process is not dominated by any single interest category,

individual, or organizational stakeholder. The Conference shall require that not more than one third of the membership of a panel dealing with an applicable Model Code and Standards shall come from any single interest category or stakeholder.

(5) *Requirement of Due Process.* Due process means that any person (organization, company, government agency, individual, etc.) with a direct and material interest (a “stakeholder”) has a right to participate by:
(A) expressing a position and its basis;
(B) having that position considered; and
(C) having the right to appeal.

(e) Avoidance of Conflict with Certain Other Bodies; Cooperation. —

(1) *Avoiding Conflict with Uniform Codes promulgated by Other Bodies.* The promulgation of NCOPO Model Codes and Standards is intended for the administration of internal procedures and process within the Legislative, Executive and Judicial Branches concerning minimal standards of official conduct; and is not intended to be in conflict with model or uniform codes already promulgated by the American Bar Association, the American Law Institute or the National Conference of Commissioners on Uniform State Laws.

(2) *Cooperation with Other U.S. and International Organizations.* The Conference may cooperate with or establish relationships with such other groups, public or private, as may seem most likely to advance the purposes of the Conference, directing special effort toward cooperative work with those bodies that represent Federal, state and municipal governments. In order to more effectively promote interests of public officials, the Conference all while reserving and maintaining complete autonomy and independence of budget, staff and operations of the Conference, shall seek a working association with all such similarly situated organizations.

(f) Standard Development Process. —

(1) *Adequate Consideration of Views and Objections.* The Conference shall assure that the Model Codes and Standards Committee and each of its respective panels provide prompt consideration to the written views and objections of all interested parties and participants as set forth under these Rules.

(2) *First Draft or Notice to Develop.* The Panel shall disseminate and post the introduced draft of the proposed Model Code or Standard; or in the alternative, a Notice to Develop, all stakeholders shall file Initial Public Comments no later than thirty (30) days after the posting

of the First Draft or Notice. Such public comments shall include proposed amendments to be considered by the Panel either by through amendment by incorporation or by deletion and substitution.

- (3) *Markup by Panel of and Public Hearing and Publication of Second Draft.* The Panel, upon expiration of the time period for Initial Public Comments, shall markup and publish a Second Draft within seven (7) thereafter, which may or may not elect to incorporate the proposed amendments and within thirty (30) days of the dissemination of the Second Draft, solicit General Public Comment to the Second Draft. The panel chairman or the presiding officer of hearing shall assure that every interested party be afforded a full and fair opportunity to be heard within the time constraints of any scheduled hearing or within the time limits for General Public Comment.
- (4) *Resolution of Objections by Panel.* Whenever an objection articulated during the General Public Comment, the Panel shall undertake an effort to resolve the expressed objections accompanied by comments related to the proposal under consideration shall be made, and each such objector shall be advised of the disposition of the objection and the reasons therefor.
- (5) *Reporting by Panel of Third Draft to Committee.* The Panel shall upon expiration of the period for the General Public Comment, review the same in markup and report out of panel within seven (7) days the Third Draft which incorporates an proposed amendments generated by the General Public Comment.
- (6) *Notification of Right of Appeal upon Reporting Third Draft by Panel to the Conference.* If resolution as described above is not achieved upon markup and release of the Third Draft, each objector shall be informed in writing that an appeals process exists within this Rule.
- (7) *Markup by Committee of Third Draft without Objection or Appeal.* If there is no appeal from any party arising from General Public Comment and Objection, the Panel shall report out the Third Draft within thirty (30) days to the Conference.
- (8) *Markup of Third Draft with Objection on Appeal.* However, if there is an appeal, the panel may either:
 - (A) adopt the appeal and proceed to report out of the panel to the Conference the Fourth Draft as amended; or
 - (B) stay the report pending a petition for allocatur by the submitter to the Trustee.
- (9) *Consideration and Markup by Trustee of Fourth Draft.* Appeal of any panel decision shall be governed by these Rules. If the Trustee grants allocatur, oral arguments shall

be scheduled within thirty (30) days of granting of allocatur and then within thirty (30) days the panel shall report out a Fourth Draft as may be directed by the Trustee.

- (10) *Consideration and Enactment of Final Draft.* The Conference shall cast electronic votes not less than thirty days upon submission of same by the Trustee to vote up or down the Adoption of the Third or Fourth Draft, which if adopted and enacted as an Model Code or Standard, shall be published as the Fifth & Final Draft. While the Third or Fourth Draft may be amended by the Conference, such amendments shall not constitute any substantive change or revision of any individual provision so as to change its original purpose or reverse a resolution of an objection, but the Conference may remand the same to the panel with instructions that a Draft is approved subject to such proposed amendments upon resolution of objections, which if agreeable shall become the Fifth and Final Draft, otherwise it shall be brought before the Conference at the next Session.
 - (11) *Waiver of this Rule.* The Trustee upon good and just cause may waive any portion of this process for adoption of Model Codes and Standards other than consideration of enactment of the Final Draft by the Conference.
- (g) Use of Model Codes. —**
- (1) *Uses by Bodies Politic.* Any body politic, regardless whether its members are Members, shall have unlimited use of Fifth & Final Draft of any Model Code or Standard subject to the conditions precedent, notices and disclaimers contained therein and are waived of any and all copyright restrictions.
 - (2) *Extent of Discretion.* The body politic electing to adopt by enactment any Model Code or Standard may exercise its discretion without limitation to extend and revise the Model Code or Standard so adopted; provided that, the Conference reserves its right to be relieved from issuing any Advisory Opinion or interpretation as to the applicability of the amended Model Code or Standard.
 - (3) *Limitation.* The rights and privileges provided to the bodies politic under this Rule do not extend to any other party under any circumstances to which the Conference at all times preserves and maintains its copyright protection.
- (h) Conditions Precedent Notices and Disclaimers. —**
- (1) No Model Code or Standard shall be published unless following conditions precedent as provided hereunder are affixed to, made part of and otherwise be incorporated

within all Model codes and standards developed, published and promulgated by the Conference.

- (2) It is understood that although the Conference by its process assembles the volunteer members representing varied viewpoints and interests to achieve consensus on the standard, to which the Conference through the Trustee administers and establishes the rules to promote fairness in the development of consensus, the Conference does not independently test, evaluate, or verify the accuracy of any information or the soundness of any judgment contained in any codes and standards.
- (3) The Conference disclaims liability for any personal injury, property or other damages of any nature whatsoever, whether special, indirect, consequential or compensatory, directly or indirectly resulting from the publication, use of, or reliance upon any code or standards, and moreover the Conference makes no guaranty or warranty as to the accuracy or completeness of any information published within any code or standard.
- (4) In the development, promulgation and publication of any code or standard, neither the Conference or the Trustee is undertaking to render legal, financial or any other form of professional or other services for or on behalf of any person or entity, nor is the Conference or the Trustee undertake to perform any duty owned by any person or entity to any other person or entity. Accordingly, any person or entity using any code or standard promulgated by the Conference should rely on his or her own independent judgment or, as appropriate, seek the advice of a competent legal or professional advisor in the determining the exercise of reasonable care in any given circumstances.
- (5) In the development, promulgation and publication of any code or standard, neither the Conference or the Trustee is undertaking any act or omission of any act which violates section 6(a) of the National Cooperative Research and Production Act of 1993, Pub. L. 103-42, (June 10, 1993), 107 Stat. 117, 15 U.S.C. 4301 *et seq.* as amended by the Standards Development Organization Advancement Act of 2004, Pub. L. 108-237 (June 22, 2004) 118 Stat. 661, nor is the Conference waiving any exemption or protection afforded to it by the aforementioned Act by being engaged in standards development activity.
- (6) The Conference has no power, nor does it undertake, to police or enforce compliance with any model code or standard other than provisions of such model codes or standards it adopts as part of its bylaws, namely NCOPO

1001, the Model Code of Official Conduct, nor does the Conference list, certify, test or inspect products or services for compliance with any code or standards, accordingly, any certification or other statement of compliance with the requirements of any code or standard promulgated by the Conference shall not be attributable to the Conference and is solely the responsibility of the maker of the statement.

- (7) Users of Conference codes and standards should at all times be aware that such model codes and standards promulgated by the Conference may be superseded at any time by the issuance of new editions or may be amended from time to time through the issuance of interim amendments. An official Conference Model Code or Standard at any point in time consist of the current addition of the code or standards together with any interim amendment then in effect. Users should at all times consult the Conference through its Model Code and Standards subscription service, or visit the Conference's website, www.ncopo.org, or otherwise contact the Conference at the office of the Trustee, to ascertain whether a given document is the current edition of an Conference Model Code or Standards.
 - (8) A statement, written or oral, that is not processed in accordance with this Rule shall not be considered an official position of the Conference or any of its panels and shall not be considered to be, nor be relied upon, as an official representation or interpretation of the Conference or the Trustee.
 - (9) The Conference does not take any position with respect to the validity of any copyright or patent rights asserted in connection with any items which are mentioned in or are the subject of the Conference model codes and standards, and the Conference disclaims liability for the infringement of any copyright or patent resulting from the use of or reliance on any Conference model code or standards. Users of the Conference model codes and standards are expressly advised that determination of the validity of any such copyright or patent rights, and the risk of infringement of such rights, is entirely the responsibility of each user.
 - (10) Users of the Conference model codes and standards should consult applicable federal, state, and local laws and regulations. The Conference does not by the publication and promulgation of its model codes and standards, intent to urge action that is not in compliance with existing applicable laws, and all such Conference model codes and standards may not be construed as doing so.
- (i) **Copyrights.** — All Conference model codes and

standards are copyrighted by the Conference. Such model codes and standards are made available for a wide variety of both public and private uses, which may include, but not be limited to reference in laws and regulations, and in use in self-regulation, standardization and promotion of government ethics, accountability and productivity. By making Conference model codes and standards available for the use and adoption by government agencies, authorities, boards, commissions and other body politics, the Conference does not waive any rights in copyright to any of its model codes and standards. Use of Conference model codes and standards for regulatory purposes should be accomplished through adoption by reference, which shall mean the citing of title, edition and publication information only. Any delegations, additions and changes desired by the adopting authority should be noted separately in the adopting instrument.

- (j) **Exceeding Minimal Requirements and Equivalency.** — Nothing within any Conference Model Code or Standard is intended to restrict any adapting authority or jurisdiction from exceeding the minimal requirements within an Conference Model Code or Standard, nor is anything within the Conference Model Code or Standard is intended to prohibit the use of any process, method, system or approaches or equivalent or superior to those provisions of the Conference Model Code or Standard so proscribed.

Rule 13 Legislative and Regulatory Ratings.

- (a) **Scope of Rule.** — The scope of this rule regarding issuance of ratings for pending legislation and regulatory rule-making in furtherance of the Trust’s charitable purposes of enforcing public officials’ compliance and upholding of their fiduciary duties.

Part I. Matters subject to Ratings.

- (b) **Appearances and Admissions, Parties Registration.** — Any attorney of good, moral and professional character shall be entitled to admission as an attorney before any proceeding of any panel, or before the Trustee in any Standard Development, Advisory or Enforcement process.

Part II. Ratings Criteria.

- (c) **“A” Rating Criteria.** — Legislation or a regulation which affects statewide jurisdiction, or in regard to an Act of Congress, nationwide jurisdiction, is qualified to obtain an “A” rating, as follows:

- (1) If the legislation proposes a permanent cure of an evil, that is, resolution of a problem affecting the entire jurisdiction, the legislation shall receive one “A” credit.
- (2) If the legislation reduces the tax burden of the statewide or national jurisdiction without distinction among the general populace, or which transfers the tax burden from the general populace to tortfeasors responsible for the evil which the legislation seeks to cure, the legislation shall receive one additional “A” credit.
- (3) If the legislation enforces an express constitutional provision, be it Federal or state, or an existing civil right secured by law, the legislation shall receive one additional “A” credit.

- (d) **“B” Rating Criteria.** — Legislation or a regulation which affects a regional or SMSA designated metropolitan jurisdiction, is qualified to obtain an “B” rating, as follows:

- (1) If the legislation proposes a permanent cure of an evil, that is, resolution of a problem affecting the entire jurisdiction, the legislation shall receive one “B” credit.
- (2) If the legislation reduces the tax burden of the statewide or national jurisdiction without distinction among the general populace, or which transfers the tax burden from the general populace to tortfeasors responsible for the evil which the legislation seeks to cure, the legislation shall receive one additional “B” credit.
- (3) If the legislation enforces an express constitutional provision, be it Federal or state, or an existing civil right secured by law, the legislation shall receive one additional “B” credit.

- (e) **“C” Rating Criteria.** — Legislation or a regulation

which affects a county or political subdivision within a county, such as a municipality, school district, or special services district, is qualified to obtain an “C” rating, as follows:

- (1) If the legislation proposes a permanent cure of an evil, that is, resolution of a problem affecting the entire jurisdiction, the legislation shall receive one “C” credit.
- (2) If the legislation reduces the tax burden of the statewide or national jurisdiction without distinction among the general populace, or which transfers the tax burden from the general populace to tortfeasors responsible for the evil which the legislation seeks to cure, the legislation shall receive one additional “C” credit.
- (3) If the legislation enforces an express constitutional provision, be it Federal or state, or an existing civil right secured by law, the legislation shall receive one additional “C” credit.

- (f) **“D” Rating Criteria.** — Legislation or a regulation which has been authored, drafted or proposed by a particular nonprofit stakeholder, regardless if the legislation would otherwise qualify for an “A,” “B” or “C” rating, shall be limited to obtain a “D” rating, if the legislation proposed by the nonprofit stakeholder suffers from the following factors:

- (1) If the legislation has been authored or drafted without being subject to a voluntary consensus standards using procedures that incorporate the attributes of openness, balance of interests, due process, an appeals process, and consensus in a manner consistent with the Office of Management and Budget Circular Number A-119 (1998 WL 216930), revised Feb. 10, 1998, the legislation shall receive one “D” credit.
- (2) If the legislation has been authored or drafted under the influence of dominance by the nonprofit stakeholder or other single interest to the exclusion of fair and equitable consideration of other viewpoints, the legislation shall receive one additional “D” credit.
- (3) If the legislation contains scrivener's errors or fails to comply with black letter law, unless the legislation expressly states it seeks to expand, enlarge, modify or repeal existing law, the legislation shall receive one additional “D” credit.
- (4) If the nonprofit stakeholder has introduced prior legislation which contains scrivener’s errors or non-compliance with black letter law, the legislation shall receive one additional “D” credit.

- (g) **“E” Rating Criteria.** — Legislation or a regulation which has been authored, drafted or proposed by a particular for profit stakeholder, regardless if the

legislation would otherwise qualify for an “A,” “B” or “C” rating, shall be limited to obtain a “E” rating, if the legislation proposed by the for profit stakeholder suffers from the following factors:

- (1) If the legislation has been authored or drafted without being subject to a voluntary consensus standards using procedures that incorporate the attributes of openness, balance of interests, due process, an appeals process, and consensus in a manner consistent with the Office of Management and Budget Circular Number A-119 (1998 WL 216930), revised Feb. 10, 1998, the legislation shall receive one “E” credit.
- (2) If the legislation has been authored or drafted under the influence of dominance by the for profit stakeholder or other single interest to the exclusion of fair and equitable consideration of other viewpoints, the legislation shall receive one additional “E” credit.
- (3) If the legislation has being promoted under the influence of dominance by the for profit stakeholder or other single interest to the exclusion of fair and equitable consideration of other viewpoints, the legislation shall receive one additional “E” credit.
- (4) If the legislation contains scrivener's errors or fails to comply with black letter law, unless the legislation expressly states it seeks to expand, enlarge, modify or repeal existing law, the legislation shall receive one additional “E” credit.
- (5) If the for profit stakeholder has introduced prior legislation which contains scrivener's errors or non-compliance with black letter law, the legislation shall receive one additional “E” credit.

Rule 14 Procedures.

(a) **Scope of Rule.** — The scope of this rule concerns the practice and procedures relative to initiation, hearing and appeals of all Standards Development, Advisory and Enforcement Process proceedings and shall be liberally construed to secure the just, speedy and inexpensive determination of every matter to which they are applicable. In the interest of expediting decision, or for other good cause as show, any panel may disregard the requirements or provisions of any of these rules in a particular case on application or a party or on its own motion and may order proceedings in accordance with its direction; *provided that*, no prejudice accrues to any party or stakeholder or violates the Thirty Day rule as set forth under these Rules.

Part I. Business of the Conference and Panels.

(b) **Appearances and Admissions, Parties Registration.** — Any attorney of good, moral and professional character shall be entitled to admission as an attorney before any proceeding of any panel, or before the Trustee in any Standard Development, Advisory or Enforcement process, *provided that* the person is a member in good standing in every jurisdiction where the person has been admitted to practice and neither has been disbarred nor is subject to pending disciplinary proceedings. Any attorney so appearing before a panel shall file a praecipe of his appearance and listing of court(s) to which he is admitted to practice thereto.

- (1) *Appearances by Government Attorneys.* An attorney who is a member of the bar of any United States District Court, who is a member of the bar in good standing in every jurisdiction in which the attorney has been admitted to practice, and who is not subject to pending disciplinary proceedings in any jurisdiction, shall be permitted to represent before any panel or the Trustee, the United States or any of the several states and their political subdivisions, agencies, authorities, boards, and other special purpose governmental units in the officer's official capacity.
- (2) *Appearances by Legal Aid Attorneys.* An attorney who is employed by or associated with an organized legal services program (which is sponsored, approved or recognized by a general purpose government unit or body politic, or a bar association or and which provides legal assistance to indigents in civil matters) and is a member of the bar of the highest court in another state (including territories and the District of Columbia) shall be admitted to practice before any panel or the Trustee in all causes in which the attorney is associated with the organized legal services program. Admission to practice under this section shall cease to be effective whenever the attorney is no longer associated with such

program. Within twenty (20) days after termination of an attorney's association, a statement to that effect shall be filed with the Secretary by a representative of the legal services program. In no event shall admission to practice under this section remain in effect longer than two and one-half (2-1/2) years without being renewed in accordance with these procedures.

- (3) *Pro Se Appearances.* Whenever a party by whom or on whose behalf an initial paper is offered for filing is not represented in the action, such party shall maintain on file with the Secretary a current address at which all notices and copies of papers in the Standards Development, Advisory or Enforcement Process may be served upon such party. Service of any notices, copies of pleadings, motions or papers in the action at the address currently maintained on file with the Secretary by a party shall be deemed to be effective service upon such party.
- (4) *Parties Registration.* Any person, natural or artificial, having an interest, material or otherwise in the outcome and result of the pending Standards Development, Advisory or Enforcement Process, and who is entitled to be heard relative the rules promulgated by the ASNI and/or by the Conference for purposes of development of consensus, shall be deemed a party, upon registration of the party, with complete name, mailing and overnight courier delivery address if different from the mailing address, city, state, nation, zip or postal code, telephone number, facsimile number, email address, URL (Internet homepage) address, and the name, title, and description of relevant authority, powers or duties of director, officer, employee, agent, etc. of the party, if the party is an artificial person by filing the same with the Trustee; *provided that*, it shall be incumbent upon the party at all times to maintain the accuracy of such filing.
- (5) *Parties in Interest Registration.* Any person, natural or artificial, having an interest, although not material in the outcome and result of the pending Standards Development, Advisory or Enforcement Process, and who is desirous of being heard relative the rules promulgated by the ASNI and/or by the Conference for purposes of development of consensus, shall be deemed a party in interest, upon registration of the party, with complete name, mailing and overnight courier delivery address if different from the mailing address, city, state, nation, zip or postal code, telephone number, facsimile number, email address, URL (Internet homepage) address, and the name, title, and description of relevant authority, powers or duties of director, officer, employee, agent, etc. of the party, if the party

is an artificial person by filing the same with the Trustee; *provided that*, it shall be incumbent upon the party at all times to maintain the accuracy of such filing.

- (6) *Entitlement and Privileges upon Registration.* Any party or party in interest upon registration is entitled to copy of any submittal filed by any other party in any and all stages of the Standards Development, Advisory or Enforcement Process before any panel, or the Trustee by electronic filing, along with issuance of any draft of a Model Code or Standard, Advisory Opinion or Oversight Determination; *provided that*, a copy of any draft of a Model Code or Standard, Advisory Opinion, or Oversight Determination shall be had by posting the same on the Conference website accompanied by notification of same and no other notice or service therein being required.

(c) Filings. —

- (1) All registered stakeholders, be they parties or parties in interest, shall file all motions, submittals with the Trustee electronically, in Portable Document Format (PDF); *provided that*, a proof of facsimile signature is filed with the Trustee in prescribed form. The auto-reply generated by the computer network system confirming receipt of the filing shall constitute a certificate of docketing only, but not as to acceptance for any other purpose under this Rule.
- (2) All registered stakeholders, be they parties or parties in interest, attorneys and parties admitted pro se shall undertake all such efforts necessary to assure the timely delivery of all such electronic filings and to make modifications to such computer software and network programming that would otherwise prevent receipt thereto and other assure their current electronic “email address” is at all times maintained and on file with the Trustee.

(d) Form of Motions and Submittals. —

- (1) *Forms.* Motions and submittals shall be in the following form as follows:
- (A) TYPEWRITTEN: Motions or other documents filed, if not printed, shall be typewritten on paper cut or folded to letter size, 8 to 8 1/2 inches wide by 10 1/2 to 11 inches long, with left-hand margin not less than 1 1/2 inches wide and other margins not less than 1 inch. The impression shall be on only one side of the paper, unless there are more than four pages, and shall be double-spaced, except that quotations in excess of a few lines shall be single-spaced and indented.
- (B) PRINTED: Printed documents may not be less than 10-point type on unglazed

paper, cut or folded so as not to exceed 8 1/2 inches wide by 11 inches long, with inside margin not less than 1 inch wide, and shall be double-column, single-spaced, except that quotations in excess of a few lines shall be indented.

- (2) *Conformance with Appendix of Forms.* All motions, submittals and other forms, except as otherwise provided, shall be in the form similar to the forms contained in the Appendix of Forms all which are sufficient under these Bylaws and are intended to indicate both the comprehensiveness as well as the simplicity and brevity of statement which the rules contemplate.
- (3) *Contents of Submittals.* All submittals except as otherwise provided for appeals, and which shall be as concise as possible, shall be in the form as follows:
- (A) Caption containing the Proposed Model Code or Standard;
- (B) Identification of the Participants;
- (C) A concise statement of the Participant’s Position on the proposed Model Code or Standard;
- (D) An abstract of the evidence relied upon by the participant filing, preferably assembled by subjects, with references to the pages of the record or exhibits where the evidence appears;
- (E) Proposed findings and conclusions and, if desired, a proposed form of language to be inserted into the proposed Model Code or Standard, together with the reasons and authorities therefor, separately stated.
- (4) *Standards governing Contents of Submittals.* Submittals must be prepared under the following standards to assure a full and complete discourse:
- (i) Present Information in clear, concise sections, paragraphs and sentences;
- (ii) Use short sentences;
- (iii) Use definite, concrete, everyday words;
- (iv) Use the active voice;
- (v) Avoid multiple negatives;
- (vi) Use descriptive headings and subheadings;
- (vii) Use a tabular presentation or bullet lists for complex material, wherever possible;
- (viii) Avoid legal jargon and highly technical business and other terminology;
- (ix) Avoid frequent reliance on glossaries or defined terms as the primary means of explaining information. Define terms in a glossary or other section of the document only if the meaning is unclear from the context. Use a glossary only if it facilitates

- understanding of the disclosure; and
- (x) In designing the presentation of the information, include pictures, logos, charts, graphs and other design elements so long as the design is not misleading and the required information is clear. Writers are encouraged to use tables, schedules, charts and graphic illustrations that present relevant data in an understandable manner, so long as such presentations are consistent with applicable disclosure requirements and consistent with other information in the document. Writers must draw graphs and charts to scale. Any information provided must not be misleading.
- (5) *Appendix of Exhibits.* Exhibits should not be reproduced in the motion or submittal, but may, if desired, be reproduced in an appendix to the motion or Submittal. An analysis of exhibits relied on should be included in the part of the motion or submittal containing the abstract of evidence under the subjects to which they pertain. Every motion or Submittal of more than 20 pages shall contain on its front leaves a subject index, with page references and a list of cases cited, alphabetically arranged, with references to the pages where the citations appear.
- (6) *Subscription of Motions and Submittals.* Except as may be otherwise ordered or requested by the Conference, the original copy of each motion, submittal or other document shall be signed in ink by the party in interest, or by his or its attorney, and shall show the office and post office address of the party or attorney. Other copies filed shall be fully conformed thereto. Motions, submittals and other documents filed with the panel, or the Trustee shall be subscribed:
- (A) By the person filing the documents, and severally if there is more than one person so filing;
- (B) By an officer thereof if it is a corporation, trust, association or other organized group;
- (C) By an officer or employee thereof if it is another agency or a political subdivision, or other governmental authority, agency or instrumentality; or;
- (D) By an attorney having authority with respect thereto.
- (7) *Documents Filed by Artificial Persons.* Documents filed by a corporation, trust, association or other organized group, may be required to be supplemented by appropriate evidence of the authority of the officer or attorney subscribing the documents.
- (8) *Effect of Signature.* The signature of the person subscribing a document filed with the Trustee constitutes a certificate by the individual that he has read the document being subscribed and filed, and knows the contents thereof; that if executed in a representative capacity, the document has been subscribed and executed in the capacity specified upon the document with full power and authority so to do; that the contents are true as stated, except as to matters and things, if any, stated on information and belief, and that as to those matters and things, he believes them to be true.
- (9) *Verification.* Any and all motions and submittals that initiate a process or contains any averment of fact to which the proponent seeks any panel to rely upon in the exercise of its judgement, must be accompanied by an affidavit attesting that to the affiant's best of the knowledge, information and belief is true and correct. Otherwise, except as required by these Rules, it may not be necessary to verify under oath a motion, submittal or other document filed with the panel or the Trustee; but any individual who shall execute a motion, submittal or other document knowing that it contains a false statement and who shall cause it to be filed shall upon a summary hearing, be suspended from all further proceedings and be subject to a Motion to Censure and any and all appropriate criminal and civil remedies available under law.
- (e) **Service.** — Motions (other than an initial motion to censure) Submittals and other documents, when filed or tendered to the Trustee for filing, shall be served upon all parties and parties in interested registered in the proceeding, at the expense thereto of the party or party in interest so serving the motion or submittal; *provided however*, the number of copies required under this subdivision may be waived by the Chairman upon written request of a stakeholder to proceed *in forma pauperis*. Service shall be made, if not by electronic filing as set forth under this Rule, by delivering in person or overnight delivery service (FedEx, UPS, USPS) and by mailing, properly addressed with postage prepaid, the requisite number of copies to each participant. When a participant has appeared by attorney, service upon the attorney shall be deemed service upon the participant. Service shall be governed as follows:
- (1) **DATE OF SERVICE:** The date of service shall be the day when the document served is deposited in the United States mail, or is delivered in person, as the case may be.
- (2) **PROOF OF SERVICE:** There shall accompany and be attached to the original of each submittal or other document filed with the Trustee when service is required to be made by the parties, a certificate of service which shall read substantially as follows:

I hereby certify that I have this day served the foregoing document upon all parties of record in this Standards Development Process in accordance with the requirements of bylaws, rules and regulations of the National Conference of Public by electronic filing or by first class mail, postage prepaid or certified overnight courier deliver to the last known address to the following:

(Counsel or unrepresented party)
(Street address)
(City, State, Zip Code)
(Telephone Number)
(Email address)

Dated this _____ day of _____, 19

(Signature)
Of counsel for _____
(Street address)
(City, State, Zip Code)
(Telephone Number)
(Email address)

Part II. Initiation of Proceedings.

(f) Notice to Develop. — The Standards Development Process shall commence by filing with the Trustee a Notice to Develop a Model Code or Standard by either submission of a proposed First Draft or in the alternative, a summary description of the goal, objective or purpose of the proposed Model Code or Standard. Upon filing of a Notice to Develop, the Trustee upon assigning the panel, shall publish the same within seven (7) days as follows:

- (1) The Conference website at its URL address.
- (2) Written correspondence to the Speaker and President *Pro Tempore* of each House of the Congress and of the legislatures of the several states.
- (3) Written correspondence to the President of the United States and the Governors of the several states.
- (4) Written correspondence to the Chief Justice of the United States and to the chief justices of the courts of last resort of the several states.
- (5) Such media being print, media or electronic which in the opinion of the Chairman will satisfy the letter and spirit of ANSI requirements to assure the widest possible dissemination to the broadest number of stakeholders possible within the prevailing budgetary constraints.

(g) Content of Notice. — The Notice as published by the Trustee shall contain sufficient description of:

- (1) The panel so appointed by the Trustee.
- (2) The dates the panel is to sit.
- (3) The name and designated number of the proposed Model Code or Standards.

(4) A summary description of the goal, objective or purpose of the proposed Model Code or Standard, stated as such: “The purpose of _____ being to _____, but finding that _____, the NCOPO proposes minimal standards establishing _____ and _____ and _____ and among other minimal requirements.”

- (5) Deadline for filing Initial Public Comments.
- (6) Right of Appeal and summary description of the appeal process.

(h) Request for Advisory Opinion. —

- (1) The Advisory Opinion Process shall commence by filing with the Secretary an Advisory Opinion Request.
- (2) The Advisory Opinion Request shall set forth a specific transaction or activity that requestor plans to undertake or is presently undertaking and intends to undertake in the future. Requests presenting a general question of interpretation or posing a hypothetical situation or regarding the activities of third parties do not qualify as advisory opinion requests.
- (3) Advisory opinion requests shall include a complete description of all facts relevant to the specific transaction or activity with respect to which the request is made.

(i) Review. — The Trustee may review or in the alternative assign to a panel of the Advisory and Oversight Committee the review of the Advisory Opinion Request to determine within seven (7) days of receipt of an Advisory Opinion Request, if it is incomplete or otherwise does not qualify as an Advisory Opinion Request under this subpart. If the Trustee or the assigned panel determines that a request for an Advisory Opinion is incomplete or otherwise does not qualify under this subpart, the request shall be returned to the requester and specify the deficiencies in the request. Upon determination that a request for an Advisory Opinion qualifies as such under this subpart, the Trustee shall direct that either the panel that has determined the request to be qualified or another panel be convened to proceed to review the Advisory Opinion Request.

Part III. Hearings and Submittals.

(j) Prompt Convening of Hearing. — The panel chairman shall be responsible for assuring that each hearing be had as required under this Rule and that the Conference website is continuously updated to reflect the time and location of all hearings being conducted by the panel.

(k) Continuances. — A continuance of a scheduled hearing may be granted if and only if the panel actually convenes and either cannot conduct business for lack of a quorum or in the alternative, one of the essential parties is unable to proceed, whereas upon unanimous consent of all panel

members present, a continuance may be had until a later hour of the appointed day, or until the next Friday at 12 noon, but no later.

(l) Conduct of Hearings. —

- (1) *Opening and Closing.* In all hearings, the proponent of any particular proposed Standard, advisory opinion or other matter, shall open and close, unless otherwise directed.
- (2) *Witnesses to be Sworn.* All witnesses proffering testimony shall be sworn in by the panel chairman.
- (3) *Presentation by the Parties.* Parties and counsel shall have the right of presentation of evidence, cross-examination, objection, motion and argument. The taking of evidence and subsequent proceedings shall proceed with reasonable diligence and with the least practicable delay.
- (4) *Objections to Evidence.* When objections to the admission or exclusion of evidence before the panel or committee are made, the grounds relied upon shall be stated briefly. Formal exceptions are unnecessary and may not be taken to rulings thereon.
- (5) *Additional Evidence.* At a stage of the hearing, the panel may, by majority vote or by unanimous consent, call for further evidence upon an issue, and require the evidence to be presented by the party or parties concerned, either at that hearing or at the adjournments thereof. At the hearing, the panel chairman may, if deemed advisable, authorize a participant to file specific documentary evidence as a part of the record within a fixed time, expiring not less than 10 days thereafter.
- (6) *Recording of Proceedings.* Hearings shall be stenographically reported by the reporter of the Conference, and a transcript of the report shall be a part of the record and the sole official transcript of the proceeding. The transcripts shall include a verbatim report of the hearings and nothing shall be omitted therefrom except as is directed on the record by the panel chairman or the Trustee. After the closing of the record, there shall not be received in evidence or considered as part of the record any document submitted after the close of testimony except as provided within these Rules.
- (7) *Transcript Corrections.* Corrections in the official transcript may be made only to make it conform to the evidence presented at the hearing and to speak the truth. No corrections or physical changes shall be made in or upon the official transcript of the proceeding, except as provided in this section. Transcript corrections agreed to by opposing attorneys may be incorporated into the record, if and when approved by the panel, committee, or

the Trustee, at any time during the hearing or after the close of evidence, but not less than 10 days thereafter.

(m) Evidentiary Rules. —

- (1) *Adoption of Federal Rules of Evidence, Exception.* For purposes of all Standard Development, Advisory or Oversight Process hearings and proceedings, the Federal Rules of Evidence shall govern the admissibility of all evidence and testimony herein, except that the Pa.R.E. 702(c) shall govern instead of F.R.E. 702 in that it reflects Pennsylvania's adoption of the standard in *Frye v. United States*, 293 F. 1013 (D.C. Cir. 1923). The rule applies the "general acceptance" test for the admissibility of scientific, technical, or other specialized knowledge testimony. This is consistent with prior Pennsylvania law. See *Grady v. Frito-Lay, Inc.*, 576 Pa. 546, 839 A.2d 1038 (2003). The rule rejects the federal test derived from *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993).
- (2) *General Rule.*
 - (A) All relevant and material evidence shall be admissible, but there shall be excluded evidence that is repetitious or cumulative, or evidence that is not of the kind which would affect reasonable and fair-minded men in the conduct of their daily affairs.
 - (B) Error may not be predicated upon an evidentiary ruling which admits or excludes evidence, unless a substantial right of a stakeholder is affected and timely objection is made.
 - (C) When the relevancy of evidence depends upon the fulfillment of a condition of fact, the panel shall admit it upon, or subject to, the introduction of evidence sufficient to support a finding of the fulfillment of the condition.
- (3) *Burden of Proof in all Proceedings.* The burden of proof in all proceedings is the duty of the party seeking to establish the trust of a given proposition by the preponderance of the evidence. Preponderance is not dependent upon the number of witnesses testifying or evidence introduced, but rather upon the credibility which, in light of all the evidence presented, the respective panel, committee or the Trustee attributes to the testimony and evidence and the effect of such testimony and evidence in inducing belief in its truth.
- (4) *Burden of Going Forward.* The burden of going forward is upon the proponent which seeks to establish a prima facie in his own favor or to destroy one when created by the opponent of a proposition. A prima facie showing is one which is sufficient to authorize a finding on the matter in issue unless contradicted or explained.

- (5) *Admission by Reference.* Matter contained in a report or other document on file with the Conference is offered in evidence, such report or other document need not be produced or marked for identification, but may be offered in evidence by specifying the report, document, or other file containing the matter so offered.
- (6) *Admission of Public Documents.* Whenever there is offered in evidence (in whole or in part) a public document, such as an official report, decision, opinion or published scientific or economic statistical data issued by any of the executive departments (or their subdivisions), legislative agencies or committees, or administrative agencies of the Federal Government (including Government-owned corporations) or a similar document issued by a State or its agencies, and such document (or part thereof) has been shown by the offerer to be reasonably available to the public, such document need not be produced or marked for identification, but may be offered in evidence as a public document item by specifying the document or relevant part thereof.
- (n) **Panel Chairman's Duties.** — The panel chairman shall have the authority, within the powers and subject to these Rules, as follows:
- (1) To regulate the course of hearings, including the scheduling thereof, subject to the approval of the membership of the panel or committee, and the recessing, reconvening, and the adjournment thereof, unless otherwise provided by these Bylaws and applicable Rules Board;
 - (2) To administer oaths and affirmations;
 - (3) To rule upon offers of proof and receive evidence;
 - (4) To hold appropriate conferences before or during hearings;
 - (5) To dispose of procedural matters with the consent of the remaining committee members;
 - (6) To take other action necessary or appropriate to the discharge of the duties vested in them, consistent with the statutory or other authorities under which the Conference functions and with the regulations and policies of the Conference.
- (o) **Restrictions on Duties of Chair.** — Panel chairmen shall perform no duties inconsistent with their duties and responsibilities as such, *provided that*, save to the extent required for the disposition of *ex parte* matters as authorized by law and by the regulations of the Conference, no panel chairman or member shall consult a person or party on a primary or substantial fact in issue unless upon notice and opportunity for participants to participate.
- (p) **Manner of Conduct of Hearings.** — It is the duty of the panel chairman to conduct a fair and impartial hearing and to maintain order. Any disregard by participants or counsel of rulings of the panel chairman on matters of order and procedure shall be noted on the record, and if he deems it necessary, shall be made the subject of a special written report to the Board. In the event that participants or counsel should be guilty of disrespectful, disorderly or contumacious language or conduct in connection with any hearing, the panel chairman may submit to the Board his report thereon, together with his recommendations, and in his discretion suspend the hearing.
- Part IV. Adjudication.**
- (q) **Evidence of Consensus.** — All votes by the respective panel and thereafter by the Conference regarding the adoption of Model Codes and Standards shall be in full conformance with and satisfy all ANSI requirements. The Conference shall not change a vote unless instructed to do so by the Voting Member. If the change of vote was not submitted in writing by the Voting Member, then written confirmation of such a vote change shall be provided to the Voting Member by the Secretary. Each and all panels are prohibited from informing Voting Members that if they are not heard from, their negative vote will be considered withdrawn and their vote will be recorded as an abstention or an affirmative.
- (r) **Contents of Advisory Opinions.** — The contents of the panel's draft of an Advisory Opinion, to be filed no later than ten days thereafter, shall be as follows:
- (1) Prefatory Statement and Question.
 - (2) Analysis and Discussion.
 - (3) Holding.
 - (4) Any concurrence in whole or in part or in judgment or dissent in whole or in part by any panel member.
- (s) **Notice of Right of Appeal by Right.** — Upon issuance of the draft of the Advisory Opinion by the panel, the aggrieved party shall be served notice or informed in the public hearing, such notice to be spread upon the record, that he may appeal to the Trustee by motion for a rule to show cause why the Advisory Opinion draft should not be Set Aside.
- Part V. Appeals.**
- (t) **Applicability of Uniform Arbitration Act.** — All appeals pursuant to this Rule shall be governed by the Pennsylvania Uniform Arbitration Act ("UAA"), 42 Pa.C.S. §§ 7341-7342, and shall constitute common law arbitration as defined by the UAA.. All rulings by the Trustee shall constitute a binding and final judgment subject to the limited provisions of the UAA correction, modification and vacating the

Trustee's ruling pursuant to 42 Pa.C.S. §§ 7314-7315. If no appeal is taken to the Philadelphia Court of Common Pleas, Orphans Court Division, the Trustee shall direct beneficiary counsel or the panel committee to confirm the Trustee's opinion pursuant to 42 Pa.C.S. § 7313.

- (u) **Appeal of Right.** — Persons who have directly and materially affected interests and who have been or will be adversely affected by any procedural action or inaction by a panel with regard to the development of a proposed Model Code or Standard that is proposed to become an American National Standard or the revision, reaffirmation, or withdrawal of an existing Model Code or Standard that is proposed to become an American National Standard, or with regard to any Advisory Opinion, shall have the right to appeal the act or decisions of the respective panel to the respective committee.
- (v) **Discretionary Appeal.** — Within thirty (30) days of the decision of the respective appellate panel, an aggrieved party may file an allocator with the Trustee, who may exercise his discretion to review in whole or in part, the objection of the decision of the appellate panel.
- (w) **Time for Taking Appeal.** — Any party shall first commence an appeal by filing a petition for Exception, with proof of service as set forth under Rule 14(e) to the panel chairman within ten (10) days of adoption of Model Code or Standard or issuance of an Advisory Opinion.
- (x) **Filing of Answer and Traverse.** — The panel shall file an Answer within thirty (30) days of receipt, whereupon the Objector shall file a Traverse within fifteen (15) days of receipt of the Answer.
- (y) **Scheduling of Hearing.** — The Trustee shall designate an appellate panel, *provided that*, the composition of any such panel shall not be all of the same political party; *and further provided*, that at no time should any panel override a precedent set forth by the Conference; or alternatively, assign the same for consideration by the Conference; and shall set forth a date within thirty (30) days a hearing for oral arguments to be heard by the appellate panel, which upon the conclusion therein, the appellate panel shall rule to accept or deny, in whole or in part, the Objector's Exceptions or if assigned to the Conference, recommended Findings of Fact and Conclusions of Law for consideration by the Conference, a copy of said decision shall be delivered to the objector and to the respective panel by electronic delivery as set forth under ?.
- (z) **Filing and Contents.** — The content of the petition for Exception, to be verified by oath or affirmation or by verified statement, and the answer shall be as follows:

- (1) Prefatory Statement and Question(s) Involved.
- (2) Statements of the Facts and of the Case.
- (3) Summary of Argument.
- (4) Argument.
- (5) Conclusion and Prayer for Relief.

(aa) **Oral Arguments.** — Oral arguments shall be had at the next regularly scheduled meeting of the appellate panel as the Trustee may from time to time designate.

Part VI. Related Administrative Matter

Explanatory Comment

This Part concerns the various other components of administering We the People Today™ including press relations.

Rule 15 Annual Reports, Notice to Attorney General, Miscellaneous Matters.

- (a) **Scope.** — The scope of this Rule is limited to the Trustee's duty to provide an annual report and accounting and also reporting to the Attorney General as required by law.
- (b) **Contents of Notice.** — The Annual Report and any other additional notice required by law or under this Rule shall be written and convey the following information:
- (1) The fact of the trust's existence.
 - (2) The identity of the settlor.
 - (3) The name, address and telephone number of the Trustee.
 - (4) The recipient's right to receive a copy of the trust instrument.
 - (5) The recipient's right to receive, at least annually, a written report of the trust's assets and their market values if feasible, the trust's liabilities and the trust's receipts and disbursements since the date of the last such report.
- (c) **Notice to Attorney General.** — Any notice required to be served upon any Beneficiary shall also be served on the Attorney General of Pennsylvania, and any other Attorney General of any other state in those states who have notice provisions relative to *paren patraie* powers similar in nature and scope to that of the Attorney General of Pennsylvania.
- (d) **Copyright and Trademarks.** — All copyrights and trademarks including The kite and key logo and the brand We the People Today™ appearing in combined Declaration type face and Chevalier type face, or in similar or dissimilar typeface, and Roosevelt-Bentman Trust appearing in Chevalier type face and for American Voters appearing in Declaration script type face, shall be the trademarks of the Trustee and appear thereto with the trademark symbol (™).

Explanatory Comment

This Rule governs service on the Attorney General of Pennsylvania and on out-of-state Attorneys General.

I. Annual Report.

The purpose of this Rule is restatement of law that the Trustee must report annually to their Beneficiaries. As stated by Bogert & Bogert, *Bogert on Trust and Trustees*, § 961 (rev. 2d ed. 1992) (footnotes omitted)

The beneficiary is the equitable owner of the trust property, in whole or in part. The trustee is a mere representative whose function is to attend to the safety of the trust property and to

obtain its avails for the beneficiary in the manner provided by the trust instrument. That the settlor has created a trust and thus required that the beneficiary enjoy his property interest indirectly does not imply that the beneficiary is to be kept in ignorance of the trust, the nature of the trust property and the details of its administration. If the beneficiary is to be able to hold the trustee to proper standards of care and honesty and to obtain the benefits to which the trust instrument and doctrines of equity entitle him, he must know of what the trust property consists and how it is being managed.

From these considerations it follows that the trustee has the duty to inform the beneficiary of important matters concerning the trust and that the beneficiary is entitled to demand of the trustee all information about the trust and its execution for which he has any reasonable use. It further follows that the trustee is under a duty to notify the beneficiary of the existence of the trust so that he may exercise his rights to secure information about trust matters and to compel an accounting from the trustee.

II. Attorneys General.

Charitable trusts can be enforced more broadly due to the fact that the "beneficiary" of the trust is in some sense the public as a whole. As a general rule, courts recognize that the state attorney general, in his capacity as a representative of the state and the public, can sue to enforce the terms of a charitable trust against the trustee. Restatement Third, Trust § 391. Cf. *Murphey v. Dalton*, 314 S.W.2d 726 (Mo. 1958) (Attorney General represents public in matters pertaining for public charity) and see also *Valley Forge Historical Soc'y v. Wash. Mem'l Chapel*, 493 Pa. 491, 500, 426 A.2d 1123, 1127 (Pa. 1981) ("An action for the enforcement of a charitable trust can be maintained by the Attorney General, a member of the charitable organization or someone having a special interest in the trust"); *In re Barnes Foundation*, ("The Attorney General, as *paren patraie* for charities, has an absolute duty to probe, challenge, and question every aspect of [a charitable trust]").

There is no statute or decisional law that requires the Trustee to serve notice or otherwise involve an Attorney General other than the Attorney General of the situs which the Trust is domiciled. However, as the Trust is *sui generis* under current jurisprudence and the climate is for more prevalent consumer protection than when charitable trusts commonly existed for political purposes, see *Charitable Trusts for Political Purposes*, 37 VIRGINIA L.REV 988 (1951), prudence would dictate that the Attorney General of a state which the beneficiary resides may also desire to be noticed and have the opportunity to be heard.

LINCOLN CHARITABLE TRUST

Of, By, and For the People™

The Trust Instrument

Explanatory Comment

The original version of the Trust Agreement was derived from a form prepared by Susan N. Gary of Mayer, Brown & Blatt from *A Layers Guide to Private Foundations* (1985) and from the Revocable Living Trust Instrument form from Trust Administration and Fiduciary Responsibility 2d.

Know all Men by these Present, Greeting

Whereas, the 59th Republican Ward Executive Committee, a lawful entity pursuant to the Election Code, Act of June 3, 1937, P.L. 1333, art. VIII, § 807, 25 P.S. § 2837, (“Settlor”) hereby transfer the property re to the Trustee, and the Trustee hereby acknowledge receipt thereof and agree to hold such property re and all investments and reinvestments thereof in trust as the Trust Property, pursuant to the Uniform Trust Act, Act of July 7, 2006, P.L. 625, No. 98, 20 Pa.C.S. §§ 7701 - 7799.3, upon the following terms and conditions.

ARTICLE I - PURPOSE AND RE

¶ **1. Name of Trust.** The name of this Trust shall be the Lincoln Charitable Trust (“Trust”) which the Trust Property shall be shared equally among Democratic and Republican beneficiaries (“caucus”) each having equal fractional interests of the assets and liabilities therein.

2011 Amendment

The name of the Trust was changed in honor of the original Republican and Democratic party litigants who obtained court precedent preserving the principles of democratic participation within the parties. Naming the trust after individuals is consistent with modern practice naming trusts, so as to not reflect a misappropriation of trust by a more generic name that would appear to simply be a political action committee.

¶ **2. Purpose of Trust.** The Trust is created for the charitable purpose of providing the Trust Property as hereinafter described, for the complete and full access to, benefit of, and usage by any and all duly qualified national, state, county, municipal, ward, district, local and subordinate committees of the Democratic and Republican Parties as defined under Section 301 of the Federal Election Campaign Act (FECA) of 1971, as amended, Pub.L. 92-225, 86 Stat. 3, 2 U.S.C. § 431(4)(C)(14), (15) and (16) and each and every elected member therein, hereinafter (“Qualified Beneficiaries”); and the general public for whom the elected members represent (hereinafter the “Beneficiaries”), to protect the exercise of their First Amendment rights to meaningfully participate within the political parties of their choice in furtherance of their inalienable and indefeasible political powers and otherwise promote exemplary public accessibility, accountability, ethical conduct and unity through increased voter participation without dilution or diminishment by undue influence, interference or obstruction by any person or persons and to otherwise

organized exclusively for educational and charitable purposes within the meaning of section 501(c)(3) of the Internal Revenue Code of 1954 (“Code”). Any income in excess of expenses shall be applied to administer the National Conference of Public Officials, Inc., (“NCOPO”) a nonprofit corporation authorized pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* to act as a standards development organization or to any other nonprofit corporation which has established its tax exempt status under Section 501(c)(3) of the Code to satisfy the requirements under Section 4947(a)(1) of the Code. Notwithstanding any other provision of this Trust Agreement, the Trust shall not carry on any other activities not permitted to be carried on (a) by an organization exempt from Federal income tax under section 501(c)(3) of the Code (or the corresponding provision of any future United States Internal Revenue Law) or (b) by an organization, contributions to which are deductible under section 170(c)(2) of the Code (or the corresponding provision of any future United States Internal Revenue Law). If upon order of the Orphans Court of the Court of Common Pleas under the Uniform Trust Act, there is termination of the Trust, after paying or adequately providing for the debts and obligations of the Trust, the remaining assets shall be distributed to a nonprofit fund, foundation or corporation which is organized and operated exclusively for educational and charitable purposes and which has established its tax exempt status under section 501(c)(3) of the Code.

2013 Amendment.

Technical changes only to satisfy IRC § 4947(a)(1).

2011 Amendment.

The provision that revenue greater than expenses to be applied to sustain NCOPO was added, effectuating the Settlor’s original intent of promoting both the Trust Property and NCOPO. All other amendments are to conform to Code requirements.

2009 Amendment.

The Trust Purpose is enlarged by the Trustee pursuant to a non-judicial settlement agreement, 20 Pa.C.S. § 7710.1, to accommodate both parties to satisfy the rule governing charitable trusts under *In re Pruner’s Estate*, 390 Pa. 592, 136 A.2d 107 (1957) that the charitable purpose benefit accrue to the public generally, not any particular class. The public benefit is the strong and viable two-party system that contributes to sound and effective government, *Timmons v. Twin Cities Area New Party*, 520 U.S. 351, 367 (1997) through usage of the Trust Property “to purge national politics of what was conceived to be the pernicious influence of ‘big money’ campaign contributions,” *McConnell v. FEC*, 540 U.S. 93, 115 (2003) by requiring candidates and political committees to raise funds from a greater number of persons, *id.* at 136, reversing “the cynical assumption that large donors call the tune [jeopardizing] the willingness of voters to take part in democratic governance,” *id.* at 144, through protecting the embodiment of representation entrusted upon elected party officials by the voters, *Bentman v. Seventh Democratic Ward Exec. Comm.*, 421 Pa. 188, 218 A.2d 261 (1966) is not diluted or diminished, *Reynolds v. Sims*, 377 U.S.

533 (1964), to assure the First Amendment rights of all persons to participate in the political party of their choice, *Kusper v. Pontikes*, 414 U.S. 51, 56-57 (1973).

The reason the purpose is charitable is because voters' right of association with those who share political views, *Rutan v. Republican Party of Illinois*, 497 U.S. 62, 69 (1990), specifically extends to a political party. *Kusper v. Pontikes*, 414 U.S. at 56-57. The First Amendment's objective of promoting uninhibited, robust, and wide open public debate, *New York Times Co. v. Sullivan*, 376 U.S. 254, 270 (1964), is uniquely served by political parties, *Democratic Party v. Wisconsin ex rel. La Follette*, 450 U.S. 107, 122 (1981), attempting to control government through electing candidates sharing common beliefs. *Eu v. San Francisco Co. Democratic Central Comm.*, 489 U.S. 214, 223 (1989). It is without dispute that "debate on the qualifications of candidates [is] integral to the operation of the system of government established by our Constitution." *Buckley v. Valeo*, 424 U. S. 1, 14 (1976); see also *NAACP v. Claiborne Hardware Co.*, 458 U. S. 886, 913 (1982); *Carey v. Brown*, 447 U. S. 455, 447 U. S. 467 (1980); *Garrison v. Louisiana*, 379 U. S. 64, 74-75 (1964). The First Amendment "has its fullest and most urgent application" to speech uttered during a campaign for political office. *Monitor Patriot Co. v. Roy*, 401 U. S. 265, 272 (1971); see also *Mills v. Alabama*, 384 U. S. 214, 218 (1966). Free discussion about candidates for public office is no less critical before a primary than before a general election. *Cf. Storer v. Brown*, 415 U. S. 724, 735 (1974); *Smith v. Allwright*, 321 U. S. 649, 666 (1944); *United States v. Classic*, 313 U. S. 299, 314 (1941). In both instances, the "election campaign is a means of disseminating ideas as well as attaining political office." *Illinois Bd. of Elections v. Socialist Workers Party*, 440 U. S. 173, 186 (1979).

Such First Amendment right cannot be abridged by those exercising such right at the expense of others entitled to the same right, *Associated Press v. United States*, 326 U.S. 1, 7, 20 (1945), such loss of First Amendment rights, even for a temporary period, constitutes immediate and irreparable injury to which no damage can be compensated, *Elrod v. Burns*, 427 U.S. 347, 373 (1976), which includes usurpation of elected officeholders, *Smith v. Gallagher*, 408 Pa. 551, 185 A.2d 135 (1962), including elected party officials, who by virtue of election, are embodied with a duty of representation to the voters who elected them, *Bentman v. Seventh Democratic Ward Exec. Comm.*, 421 Pa. 188, 218 A.2d 261 (1966); *People ex rel. Coffey v. Democratic General Committee*, 164 N.Y. 335, 341-342, 58 N.E. 124, 126 (1900), as whomever voters elect are presumed not be surplusage. *Derringer v. Donovan*, 308 Pa. 469, 473-477, 162 A. 439, 441 (1932), and whose rights cannot be diluted or diminished. *Reynolds v. Sims*, 377 U.S. 533 (1964).

The expression "inalienable and inalienable political powers" is extracted from Article I, § 1 of the Pennsylvania State Constitution to further buttress the rights of voters generally. The terminology is as it appears in the Constitution of 1790 and was intended by the authors, enlarging upon Benj. Franklin's writings in the 1776 Constitution to incorporate (in greater detail) Thos Jefferson's views articulated in the Preamble to the Declaration of Independence. The phraseology is reiterated under ¶8(A).

2008 Amendment.

No substantive changes, instead the language is rewritten solely to provide the court an unambiguous understanding of the Trust's charitable purpose, but merely enables the court to grasp the constitutional implications of the Trust's charitable purposes, as per the first clause as articulated in such cases as *Rutan v. Republican Party of Illinois*, 497 U.S. 62, 69 (1990); *Kusper v. Pontikes*, 414 U.S. 51, 56 (1973) in harmony with the second clause specifically pronounced in *McConnell v. FEC*, 540 U.S.

93 (2003); *Shrink Missouri v. Nixon*, 528 U.S. 377 (2000); *FEC v. National Right to Work Comm.*, 459 U.S. 192, 208 (1982), and *Colorado Republican Federal Campaign Comm. v. FEC*, 518 U.S. 604, 622- 623 (1996).

¶ 3. **Life of Trust.** The Trust shall continue forever.

¶ 4. **Original Trust Res.** The Settlor acknowledges that it has transferred to the Trustee without consideration all copyright and trademark ownership and similar legal instruments of an open architecture, Internet-based, contact relationship management ("CRM"), social networking ("SocNet") software as a service ("SAAS") program ("Trust Property") which is the original corpus of the Trust Property.

2009 and 2010 Amendments.

The additional language merely provides a description of the trust property, but also omitted its original tradename, which survives under its new brand name We the People Today™ Political Suite.

¶ 5. **Additions to the Trust Res.** The Trustee may receive and accept additional property, whether real or personal, by way of gift, bequest, or devise, from any person, firm, trust, or corporation, to be held, administered and disposed of in accordance with and pursuant to the provisions of this Trust Agreement, but no gift, bequest or devise of any such property shall be received or accepted if it is conditional or limited in such a manner as to violate the purpose of this Trust and provisions of this Trust Agreement, or shall be the opinion of the Trustee, jeopardize the Federal income tax exemption of this Trust pursuant to application sections of the Internal Revenue Code of 1986 or any Federal or state law governing campaign finances, electioneering and political parties. All such original and additional property is referred to herein collectively as the Trust Property.

¶ 6. **Retention of the Property Character.** Any Trust Property transferred to this Trust shall retain its original character.

¶ 7. **Private Benefit and Advocacy Prohibited.** No part or portion of the Trust Property or any income or interest earnings therein shall inure or be payable to or for the benefit of any private individual, and the Trustee when acting in his official capacity, shall not violate his duty of impartiality or undivided loyalty due all beneficiaries by promoting, attacking, supporting or opposing any candidate for public or political office.

2009 Amendment.

The additional language relating to duty of loyalty was inserted to assure understanding this paragraph was asserting the doctrine of strict prohibition, see e.g. *In re Flagg's Estate*, 365 Pa. 82, 73 A.2d 411 (1950); Restatement Third, Trusts, § 78 as a default fiduciary standard. The heading was enlarged to include "advocacy" solely for descriptive purposes only which no substantive change was intended.

2008 Amendment.

The stricken language is removed as surplusage, the new language regarding prohibition against PASO (the FEC acronym

for Promoting, Attacking, Supporting or Opposing a candidate for public or political office) is inserted primarily for clarify and unambiguity, and a restatement of both Federal and state law.

¶ 8. Distributional Requirements of Trust Property.

(A) *Trust Property for Use by Beneficiaries.* The Trust Property shall at all times be available, without interference or obstruction by any person or persons, for distribution for lawful campaigning and electioneering on behalf of their respective political party and its candidates, nominees, and all other persons in affinity with the purposes of the Trust, and for all other protected First Amendment right of association or petition for redress of grievance or of speech or of the press or inspection of the affairs of Government, and to exercise all other and additional inalienable and indefeasible political powers without assessment, cost or fee to any Beneficiary. Distribution shall be through the Trust Property's public portal. Each beneficiary's interest in the Trust is inalienable and cannot be disclaimed to injure the Trust's charitable purposes.

(B) *Trust Property for Use by Qualified Beneficiaries.* The Trust Property shall at all times be available, without interference or obstruction by any person or persons, for distribution for lawful campaigning and electioneering on behalf of their respective political party and its candidates, nominees, and all other persons in affinity with the purposes of the Trust, to any Qualified Beneficiary, candidates, nominees and all other persons in affinity with the purpose of the Trust upon acceptance of an End User License Agreement ("EULA"), renewable annually which shall provide such terms and conditions the Trustee deem prudent to assure no violation of applicable campaign finance, revenue or trust law. Distribution shall be through the appropriate caucus.

(C) *Expense Divided Evenly Among Parties.* The expense of distribution and for the administration of the Trust, 20 Pa.C.S. §7780.6(a)(8), and protection of the Trust Property, 20 Pa.C.S. § 7779, and any advances heretofore or hereinafter made by the Trustee under 20 Pa.C.S. §§ 7769, 7780.6(a)(7) shall be divided equally between the two political parties to assure that the Trust is undiminished and self-perpetual, and any expense there in made by one party on behalf its Qualified Beneficiaries not equally shared by the other party shall be reimbursed by the latter party before distribution of the Trust Property under subparagraph (B) to any Qualified Beneficiary of the respective party in addition to any surcharge under subparagraph (E).

(D) *Distribution of Expense by Candidates.* Each party may elect to surcharge candidates for public office or currently elected public officeholders ("Current Beneficiaries") who are not Qualified Beneficiaries within each respective state to offset or subsidize the expenses under Subparagraph (C) by payment of an equitable End User License Fees in such manner as the Trustee may elect in accordance with campaign finance laws of the respective state; *provided that*, such requirement be limited only to statewide, Congressional or other major candidates.

(E) *Surcharge for Breach of Fiduciary Duty, Impoundment.*

(1) Any Qualified Beneficiary and all elected members therein or any candidate or nominee who shall abridge, interfere or obstruct the rights of any other Beneficiary or of any other Qualified Beneficiary or its candidate or nominee, shall be liable, jointly and severally, for damages limited to the loss incurred by the injured Qualified Beneficiary or class of Qualified Beneficiaries caused by such breach, the sum the Trustee shall impound from proceeds generated by the Trust Property, in addition to any other remedy under law.

(2) The Trustee, pursuant to his authority under 20 Pa.C.S. § 7780.6(a)(3), shall arbitrate the dispute between the Qualified Beneficiaries pursuant to the Pennsylvania Uniform Arbitration Act, 42 Pa.C.S. §§ 7341-7342, and after a due process hearing, issue an arbitration award which may be confirmed and entered as judgment in any court having jurisdiction thereof.

(3) Any surcharge levied by an arbitration award shall limited to actual damages, including any advances or liens against the Trust made pursuant to 20 Pa.C.S. §§ 7769(b), 7772(h), 7780.6(a)(7) and any reserves required by ¶ 8(C) and ¶ 15(D) of this Trust Agreement, and all reasonable attorney fees and court expenses.

(4) Any advance by any co-beneficiary equal to the surcharge levied by an arbitration award shall reimbursed by all remaining beneficiaries until the respondent satisfies the surcharge or sufficient sums are impounded by the Trustee.

(F) *Indemnification.* No national, state, county, municipal, ward, district and local committees of the Democratic or Republican Party as is or as a Qualified Beneficiary or any elected member therein shall be liable for and are fully indemnified and held harmless for any expense of distribution and for the administration of the Trust, 20 Pa.C.S. § 7779, or for any advances heretofore or hereinafter made by the Trustee under 20 Pa.C.S. §§ 7769(b), 7772(h), 7780.6(a)(7), except for any surcharge assessed under subparagraph (E) in accordance with all due process.

(G) *Commercial Software.* The use of commercial products shall not exempt any Qualified Beneficiary and its elected members or candidate or nominee from their duties entrusted to them by law as tenants in common and owners of equitable interests in the Trust Property.

(H) *Use of Trust Property by the Trustee.* Distribution of the Trust property to the Trustee or any state co-trustee when acting as a Qualified Beneficiary or as a candidate or nominee shall not constitute self-dealing provided no other Qualified Beneficiary, candidate or nominee is denied distribution of the Trust Property by a breach of trust or other tortious conduct.

(I) *Distribution of Annual Basis.* The Trustee shall, as required by the Internal Revenue Code, distribute to each Qualified Beneficiary his undivided fractional interest as an equitable owner of the Trust, such to be noticed in the Annual Report, and report the same, along with funds in reserve and impounded to the Internal Revenue Service and all applicable Federal, state or local campaign finance regulatory agency. The Qualified Beneficiary shall be solely responsible for the reporting of same to the Internal Revenue Service and to any other Federal, state or local

campaign finance regulatory agency.

2014 Amendment

Subparagraphs (A), (D) and (E) were amended pursuant to ¶ 24 by the Trustee to conform to law and is stylistic only, no substantive change was made.

Subparagraph (A)'s last sentence is simply a restatement of common law, incorporated into the Pennsylvania Uniform Trust Act at 20 Pa.C.S. § 7706 which expressly provides that: "The common law of trusts and principles of equity supplement this chapter, except to the extent modified by this chapter or another statute of this Commonwealth." The common law of Pennsylvania (as well as all other states) includes The Charitable Uses Act of 1601, Statute of 43 Elizabeth, c. 4. (1601). See *City of Philadelphia v. Heirs of Girard*, 45 Pa. 9, 39 (1863). In that the Pennsylvania Uniform Disclaimer Act, 20 Pa.C.S. §§ 6201-6207 does not expressly abrogate the Statute of Elizabeth, *In re Rodriguez*, 587 Pa. 408, 414-415, 900 A. 2d 341, 344-345 (2003), the common law remains undisturbed. More importantly, the Pennsylvania Uniform Trust Act cures a defect of Pennsylvania never having adopted the Statute of Elizabeth. *Hill School Tax Exemption Case*, 370 Pa. 21, 24, 87 A. 2d 259, 262 (1952); *In re Milton Hershey School*, 867 A. 2d 674, 681-682 (Pa.Cmwlth 2005) *rev. on other grounds* 590 Pa. 35, 911 A. 2d 1258 (2006).

Subparagraph (D) qualified candidates and officeholders as Current Beneficiaries solely for clarification to distinguish them from Qualified Beneficiaries and Beneficiaries generally, consistent with the V.O. Key's distinction of major political elements in *Politics, Parties, and Pressure Groups* 211-212 (5th ed. 1964).

Subparagraph (E)(3) assures that any surcharge is limited to actual damages. The purpose of surcharge, however, "is reimbursement for losses, not punishment of the fiduciary guilty of nonfeasance." *In re Francis Edward McGillick Foundation*, 406 Pa. Super. 249, 266, 594 A.2d 322, 331 (1991), *rev'd on other grounds*, 537 Pa. 194, 642 A.2d 467 (1994). The requirement for reasonable attorneys fees and court costs is because charitable trusts are exceptions to the American rule. See e.g. *Dardovitch v. Haltzman*, 190 F.3d 125, 135 (3d Cir 1999) citing Bogert § 871 in re awarding legal fees.

Subparagraph (E)(4) reiterates the Common Fund rule that should any co-beneficiary act to protect the Trust, all other co-beneficiaries are to reimburse the original co-beneficiary. "[W]here one of many parties having a common interest in a trust fund, at his own expense takes proper proceedings to save it from destruction and to restore it to the purposes of the trust, he is entitled to reimbursement, either out of the fund itself, or by proportional contribution from those who accept the benefit of his efforts." *Trustees v. Greenough*, 105 U.S. 527, 532, 25 L.Ed. 1157, 1160 (1881). See also *DuPlaine's Estate*, 185 Pa. 332, 334-335, 39 A. 947, 948 (1898); Bogert § 191.

2013 Amendment

Subparagraph (E) was amended pursuant to ¶ 24 by the Trustee to conform to law, in as the stricken language indemnified county and local party committees from surcharges against a national or state party committee for breach of fiduciary duty. Because the party is a singular entity, *Brown v. Finnegan*, 389 Pa. 609, 133 A.2d 809 (1957) *affirming* 8 Pa. D. & C. 2d 780, 783 (Dauphin Co. C.P. 1957) construing Act of June 3, 1937, P.L. 1333, § 801, the Penna. Election Code, 25 P.S. § 2831; it was held that providing such relief among political committees within the political party would violate 20 Pa.C.S. § 7773 regarding impartiality.

2010 Amendment.

Subparagraph (C) was amended and a new subparagraph (F) was inserted to clarify the Settlor's intent and remove any ambiguity that absolutely no liability accrues to any Qualified Beneficiary, other than any surcharge that is assessed. The purpose of Subparagraph (C) is to assure that one party does not rely upon or otherwise "piggyback" on the efforts of the other caucus and therefore unfairly profit upon the other party's labor. Subparagraph (F) was requested by the Democratic National Committee.

.....

2009 Amendment.

A new subparagraph (A) was inserted to reiterate the requirements for charitable purposes as set forth under *In re Pruner's Estate*, 390 Pa. 592, 136 A.2d 107 (1957) are fully articulated. The phrase "inalienable and inalienable political powers" is added to underscore the First Amendment rights of political association.

Subparagraph (B) was enlarged upon to represent that only qualified beneficiaries, i.e., party officeholders, candidates and nominees are distributed access to the Trust Property only through their respective Democratic or Republican caucuses, while the public at large, are distributed access to the Trust Property through its public portal for access to the qualified beneficiaries of either one or both of the caucuses.

Subparagraph (C) was enlarged upon to assure that the trust is forever undiminished and self-perpetual. Because of the causes and resulting non-judicial settlement that resulted in the Trust becoming bipartisan, the clause requiring reimbursement by one national party committee to offset the expense incurred by the other for administration of the trust and protection of the trust property must be paid before being awarded distribution rights under subpart (A). Reference is made to subparagraph (E) for remedy arising from failure to comply with Subparagraph (C).

Subparagraph (E) is a restatement of law of fiduciary duty among co-beneficiaries, see e.g., Bogert & Bogert, *BOGERT ON TRUSTS*, § 191 (2d ed. Rev.) "Duties of Beneficiaries" followed by i.e., *Fresh Kist Produce LLC v. Choi Corp, Inc.*, 223 F.Supp. 1, 8, (D.D.C. 2002) *amended* 251 F.Supp.2d 138 and *Christman v. Seymour*, 145 Ariz. 200, 202, 700 P.2d 898, 900 (1985). See also 4 *SCOTT & ASHER ON TRUSTS* § 25.3 "Beneficiary's Duties to Other Beneficiaries." Both speak to the well settled rule in *DePlaine's Estate*, 185 Pa. 332, 334-335, 39 A. 947, 948 (1898). Damages are limited to actual loss occurred, see e.g. *In re Scheidmantel*, 868 A.2d 464, 493-494 (Pa.Super. 2005) but the subparagraph assures a due process hearing. It is generally agreed by the text-writers the remedy readily available at the Trustee's disposal is impoundment. Bogert, *supra* ("If a beneficiary commits an act which violates this duty he may be required to reimburse the trust fund or his co-beneficiaries for the damages suffered, his interest under the trust being impounded for that purpose"); Restatement Second, *Trusts* § 253 ("[co-beneficiary] is personally liable for the amount of the loss, and his beneficial interest is subject to a charge thereof").

A new subparagraph (H) was included to underscore that whether or not a Qualified Beneficiary was distributed access to the Trust Property, the Trustee will distribute and the Qualified Beneficiary will comply with the Internal Revenue Code the reporting of the Qualified Beneficiary's annual basis to the IRS and if so required to Federal and state campaign finance reporting agencies. This measure assures compliance with the Internal Revenue Code and also the Federal Elections Campaign Act, which requires reporting of "dividends, interests and other forms of receipts," 2 U.S.C. §434(b)(2)(J), and the name, etc., if such is in excess of \$200. 2 U.S.C. § 434(b)(3)(G).

2008 Amendment.

This paragraph has been divided into four subdivisions, of which subdivision A was the original language. The changes to the original language was merely to provide clarity and remove any ambiguity.

Subparagraph (B) is new and is grounded in the legal analysis concluded by the Pennsylvania General Counsel, among other authorities. Candidates are to subsidize the distribution of the Software to the Qualified Beneficiaries, although such shall be limited only to the Qualified Beneficiaries within the state. The term “equitable end use licensee fee” is to convey the meaning that those candidates, i.e., statewide and Congressional candidates who, by virtue of greater campaign contribution receipts, are in a better position to pay, should do so.

Subparagraph (G) also provides that all Qualified Beneficiaries, candidates and nominees are not exempted from their ownership responsibilities even if they use competing commercial products.

Although Subparagraph (D) is new, it merely restates governing law regarding impartiality and is inserted to provide a bright line rule distinguishing usage of the Trust Property by Trustees if or when they are beneficiaries, candidates or nominees.

¶ 9. Rights of Amendment. The Settlor may at any time and upon successive occasions, alter or amend this Trust in whole or in part, for good and just cause, if and only any of the Original Trustees are a duly elected officer thereof the Settlor. Notwithstanding the right of amendment, this Trust is irrevocable.

2009 Amendment.

The last sentence was modified to correctly state the Trust is irrevocable and no substantive change was intended.

2008 Amendment.

Provisions reserving Revocation is stricken, as such was never the original intent of the Settlers to revoke the Trust, the language originally appearing as boilerplate.

¶ 10. Spendthrift Clause. No equitable right or interest or principal or income of any part of the Trust Property created under this Trust Agreement shall be alienated, anticipated, assigned, destroyed by conveyance, surrender or release, or encumbered, or subject to any creditors' claim or to legal process, prior to its actual receipt by the Beneficiary or Qualified Beneficiary, the distribution being the sole and absolute discretion of the Trustee. If the creditor of any Beneficiary or of any Qualified Beneficiary who is entitled to any distribution under this Trust Agreement attempts by any means to subject to the satisfaction of his claim the interests of the Beneficiary or Qualified Beneficiary in any distribution, then, notwithstanding any other provision of this Trust Agreement, unless the release of the writ of attachment or garnishment or other process, the Trustee collectively shall act as advised by counsel.

2009 Amendment.

No substantive changes were intended. The clauses “equitable right,” “alienated” and “destroyed by conveyance, surrender or release” was inserted to assure the fullest degree of protection and assure the principle of *cujus est dare, ejus est disponere* [he who has a right to give, has the right to dispose of the gift]. *Morgan's Estate*, 223 Pa. 228, 230, 72 A. 498, 499 (1909).

2008 Amendment.

The Spendthrift provision is further enhanced with the inclusion re Trustee discretion, per guidance from *First Northwestern Trust Co. v. IRS*, 622 F.2d 387 (1990) and Mario A. Mato, *Piercing of Spendthrift Trusts, Family Limited Partnerships, and Other Threats to Estate Planning Structures*, ABA Section of Real Property, Probate and Trust Law, 19th Annual Spring Estate Planning Symposia (May 1-2, 2008) to assure protection of the Trust Property under the Spendthrift provision.

ARTICLE II - THE TRUSTEE

¶ 11. Trustee. The current Trustee is the Honorable Peter J. Wirs of Pennsylvania.

2011 Amendment.

Amendment reflects the revision resulting from amending ¶ 12 *infra*. For purposes of ¶ 9, *supra*, the current trustee is one of the original trustees and as of the date, an officer of the Settlor.

¶ 12. Organization, Appointment, Death or Resignation or Removal of Trustee. There shall be one Trustee, who shall have authority pursuant to the Uniform Trust Act, 20 Pa.C.S. § 7780.6(32) to appoint one Democratic and one Republican co-trustee to act in each respective state jurisdiction (“Ancillary Trustees”) and confer upon the appointed Ancillary Trustee all powers and duties of the appointing Trustee, require that the appointed Ancillary Trustee furnish security and remove the appointed Ancillary Trustee thereto. In the event of the resignation or removal of the Trustee, a successor Trustee shall be appointed by unanimous written agreement of the qualified beneficiaries if the Attorney General of Pennsylvania concurs in the selection, such consent shall not be unreasonably withheld; otherwise the successor trustee shall be appointed by the court upon petition by the Attorney General of Pennsylvania. Ancillary Trustees who retire in good standing may be afforded such privileges as co-trustee emeritus.

2011 Amendment.

¶ 12 was substantially amended to provide for only one Trustee who would exercise his statutory authority to appoint co-trustees in act in other jurisdiction, the only modification from the statutory language is that there must be two co-trustees within each jurisdiction, one being a Democrat and the other being a Republican. This amendment removes the possibility of qualified beneficiaries may impair administration of the trust and protection of the Trust Property by inaction or failure to appoint trustees as was previously provided. This amendment necessarily eliminates all prior references to “circuits” it being found as lacking in clarity as compared to a single state.

2010 Amendment.

Subparagraph (E) was substantially amended to remove from chairmen of the national party committees the recommendation of successor trustee candidates and vest such in the hands of all qualified beneficiaries within a respective party. The provision including concurrence of the Attorney General is primarily to assure oversight. The amendment, the underlying principle being recommended by the Attorney General, the Attorney General, strips the national party chairs of any discretion, which as historically demonstrated, was problematic, and further pursues the Trust’s democratic principles of vesting control back into the hands of precinct and county committee members.

2010 Amendment.

No substantive changes.

2009 Amendment.

Subsequent to the non-judicial settlement to establish the Trust as bipartisan and division of the Trust into two partisan subtrusts, the number of trustees was further enlarged from 17 to 24, of which 12 Democratic Circuit Trustees would administer the Democratic Leadership Trust and 12 Republican Circuit Trustees would administer the Republican Leadership Trust. Language that the Trustee was to be at-large was merely a clarification. An additional provision was added to allow the party opposite that of the Trustee to designate one among them as the Vice Chairman. A new provision was provided to accommodate for Senior Trustees, analogous to senior judges. Additionally, the definition of District Trustees was included under new subsection (D) to reflect the Circuit Trustees' powers to appoint ancillary trustees within districts as set forth under 20 Pa.C.S. § 7780.6(a)(32). The Trustee's advice and consent is merely to confirm such appointment is in compliance with governing law and the Trust Agreement.

2009 Amendment.

The Trustees pursuant to their authority under Art. II, ¶ 24, modified this section under Resolution 2009-19 to reconcile FECA with the Uniform Trust Act, by removing the RNC's unfettered discretion and placing recommendation authority under the RNC Chairman with court supervision. Federal Election Commission regulations at 11 CFR 300.2(c) defined as a "sponsor" suspect of violating BCRA provisions amending FECA as *inter alia*, one who appoints governing officers or directors of another entity. See 11 CFR 300.2(c)(2)(iii). After extensive discussions with the Federal Election Commission's general counsel, who on April 27, 2009 opined that this issue was a matter of Pennsylvania law, and not FECA or FEC regulations. The amended provisions now clearly states that the existing Trustees appoint a successor recommended by the RNC Chairman provided a full and fair opportunity to be heard is afforded all beneficiaries and when required by law, consent of the Attorney General is provided, see e.g. 20 Pa.C.S. § 7764(d)(2), all under the supervision of the court. 20 Pa.C.S. § 7711(a).

2008 Amendment.

This Paragraph has been substantially rewritten as per the Findings of Fact and Conclusions of Law in Resolution 2008-16 following *In re The Barnes Foundation*, 69 Pa. D. & C.4th 129, 24 Fiduc.Rep.2d 94 (Montg. O.C. 2004). The Trustee is enlarged from the original concept of a three member board to now a 15 member board. The Trustee Chairman is the full-time trustee and systems administrator, and notwithstanding the Pennsylvania legislature eliminated the "resident trustee" requirement, *cf.* 20 Pa.C.S. § 7103, now superceded by 20 Pa.C.S. § 7764, is required to be a resident trustee of the state which the Trust's situs. The remaining 14 Co-Trustees are to be from circuits consisting of contiguous states within regions as divided into the respective State Associations for the purposes of electing the regional vice chairmen of the party.

¶ 13. Change in Trusteeship. Upon any change in any trusteeship hereunder, the continuing Trustee or successor Trustee, as the case may be, shall have all of the powers, authorities, rights, discretions, immunities, estates, titles, duties and obligations of the original Trustees, without the necessity of any conveyance or the taking of any action whatsoever.

¶ 14. Limitations on Duties with Respect of Successor Trustee. No successor Trustee shall have any responsibility for the acts or omissions of any prior

Trustee and no duty to audit or investigate the accounts or administration of any such Trustee, nor, unless in writing requested to do so by a person having a present or future beneficial interest under the Trust hereunder, any duty to take any action to obtain redress for breach of trust. It is the intent of the Settlor that the successor Trustee shall not be required to obtain approval or discharge by any court of law or equity or to pursue any other court proceeding at the request of the Beneficiaries. However, regardless of any such circumstances, any claim or action in law or equity against any previous Trustee must in any event be asserted or commenced or filed within one (1) year after the appointment of a successor Trustee, unless otherwise provided by law.

¶ 15. Trust Management.

(A) *Powers Generally.* The Trustee shall exercise and discharge all powers as provided by law, including all illustrative powers of trustee as provided under the Uniform Trust Act, inclusive, together with any amendments thereto, such specific powers being hereby incorporated by reference thereto and made part of this Trust Agreement, of which the incorporation of one or more of the powers contained in the Uniform Trust Act, 20 Pa.C.S. § 7701-7799, shall be in addition to and not in limitation of the common law or statutory powers of trustee. The Trustee shall have, in addition to all powers granted by law, require each Ancillary Trustee to act in accordance with any directive issued by the Trustee as set forth within Internal Operating Procedures promulgated by the Trustee to assist each of the Ancillary Trustees in the administration of the Trust Property within their jurisdiction; *provided that*, such rules are not inconsistent with law or this Trust Agreement.

(B) *Integration with other Software.* The Internal Operating Procedures shall provide for the integration of the Trust Property with any other software program or software as a service offered by any other corporation or nonprofit organization or political committee to the Beneficiaries or to any Qualified Beneficiary without undue burden or cost to either the Trust, corporation, the nonprofit organization or political committee, but the Trustee is not obliged to integrate the Trust Property the expense of the Trust or any other Qualified Beneficiary.

(C) *Duty of Impartiality.* As officers of the court, the Trustee and each Ancillary Trustee shall at all times act impartially in the administration of the trust and the protection and distribution of the Trust Property, 20 Pa.C.S. § 7773, and at no time shall deliberately cause any advantage accrue to a Qualified Beneficiary at the expense of another, the only loss which a Qualified Beneficiary may incur shall be that of its own doing arising from non-compliance with the terms of this Trust Agreement or applicable law.

(D) *Sufficient Endowment.* In administering the Trust, the Ancillary Trustees shall assist the Trustee who at all times shall assure that the Trust Property is at all times fully protected, 20 Pa.C.S. § 7779, by possessing adequate funds to assure that the Trust is undiminished and self-perpetual, which shall include an endowment or escrow to represent such funds as necessary to sustain the

administration of the trust for not less than ten subsequent years.

(E) *Civil Procedures*. Whenever a due process hearing is required any provision herein, such applicable parts and provisions the Federal Rules of Civil Procedure shall be adapted by the Trustee to assure a full and fair opportunity for all parties-in-interest to be heard, including governmental agencies. 20 Pa.C.S. § 767. The Trustee shall provide all accommodations reasonable and prudent to assure no party-in-interest is denied the fair and full opportunity to be heard by himself or by his counsel, which may include convening such due process hearings telephonically or online; *provided however*, that all persons participating in the hearing are able to fully hear each other. 15 Pa.C.S. § 5708. All parties-in-interest shall be solely responsible for their own attorney's fees and legal costs.

(F) *Annual Audit*. The Trustee shall submit annually to an independent audit by a nationally reputable certified public accountant and publish such independent audit in the Annual Report required by law. 20 Pa.C.S. § 7780.3(i)(5).

2011 Amendment.

Changes are primarily stylistic to incorporate the amendment under ¶ 12. Incorporation with other software was enlarged to include for-profit corporations, provided such does not impair the Trust Purpose as provided under ¶ 2.

2010 Amendment.

The term subtrust was replaced with caucus, no substantive change intended. See comment to ¶ 1.

2009 Amendment.

Because of the enlargement of the Board of Trustees from 15 to 23 co-trustees and division of trusts into two subtrusts, Paragraph 15 was enlarged upon to provide for the Vice Chairman to assume the powers and duties in the latter's absence, disability or vacancy of office, until a successor Trustee is appointed. Additionally, subparagraph (D) was enlarged upon to reflect the importance of the Internal Operating Procedures to the efficient administration of the trust to carry out the terms of the Trust Agreement and governing law. Subparagraph (B) was rewritten that provides for appointment of ancillary trustees per state, county or smaller political subdivision. 20 Pa.C.S. § 7780.6(a)(32).

A new subparagraph (E) provides the Trustees may promulgate such necessary Internal Operating Procedures to assure integration of the Trust Property with software offered by other nonprofit organizations or political committees, i.e. ActBlue or MoveOn.org. This provision was not previously necessary because unlike the Democrats, the Republicans had no such nonprofit entity providing online functions equal to that provided by ActBlue or MoveOn.org. With expansion of the Trust to include both Democrats and Republicans, subparagraph (E) allows for the integration of such software, since existing entities cannot satisfy the *Bentman* rule to which only the Trust can accomplish. Inclusion of this provision necessarily precludes integration with commercial software products, as such undermines both the nonprofit as well as the charitable nature of the Trust and the nonprofit attributes of entities such as ActBlue and MoveOn.org.

Additionally, because the Trust is now bipartisan, subparagraph (F) was provided to assure that the Trustees themselves do not manage the Trust so as to enable one party an advantage over another, the only disadvantages that arise would be solely that

inflicted by a Qualified Beneficiary on itself by non-compliance with the terms of this Trust Agreement.

Subparagraph (G) was inserted only to fully define what constitutes assurance that the Trust be undiminished and self-perpetual, in that there be held in escrow sufficient funds to sustain the administration of the trust for at least ten years subsequent to the current operating year. The inclusion of this provision is to assure that the Trust is sufficiently endowed notwithstanding normal political pressures.

A new subparagraph (H) was inserted to define what constitutes a due process hearing and definition of a full and fair opportunity to be heard. The provision allows the Trustees to adopt the appropriate parts and provision of the Federal Rules of Civil Procedure to govern such due process hearings. Provision is made to accommodate out-of-state parties-in-interest by authorizing telephonic or online hearings. The subparagraph also assures that all parties-in-interest are solely responsible for their own attorneys' fees and legal costs.

A new subparagraph (I) was inserted to require that the Trustees undergo an annual audit by an independent certified public accountant, if it is determined that Pennsylvania law that appears to require such audit, is determined not be applicable.

2008 Amendment.

Because of the enlargement of the Board of Trustees from three to 15 co-trustees, Paragraph 15 is rewritten to delineate that the Trustee Chairman is the full-time trustee empowered with the primary decision-making authority, except that he is required to assign and delegate trust administration matters which are "more prudently administered" by co-trustees within their state(s) or who are appointed by virtue of their special skills and expertise. Subparagraph (D), while new, is merely a restatement of law and permanently empowers the Trustees to adopt Internal Operating Procedures, to have the effect of law when not inconsistent with applicable law and the Trust Agreement. The balance of the subparagraphs are stricken as surplusage.

¶ 16. Inclusion of Prudent Man Rule. Notwithstanding the fact that the Trustee is granted broad powers under this Trust Agreement, it is the intent of the Settlers that these powers only be utilized in a way as to meet the needs of the various kinds of administrative, financial, and distribution responsibilities imposed upon the Trustee in this Trust Agreement. It is assumed and imposed upon the Trustee that under any and all circumstances the Trustee shall follow the Prudent Man Rule and perform all acts within the limits of the fiduciary responsibility imposed on a trustee by law. Accordingly, the Trustee shall administer the trust as officers of the court in good faith in accordance with the provisions of this Trust Agreement solely in the interests of the Beneficiaries and in accordance with applicable law and shall at all times administer the Trust by acting impartially in investing, managing and distributing the Trust Property, giving due regard to the Beneficiaries' respective interests in light of the purpose of the Trust, and otherwise treat all Beneficiaries equitably in light of the purpose of the Trust. In administering the Trust, the Trustee may incur only costs that are reasonable in relation to the Trust Property, and otherwise administer the Trust as a prudent person would, by considering the purposes, provisions, distributional requirements and other circumstances of the Trust and by exercising reasonable care, skill and caution.

The Trustee shall take reasonable steps to take control of and protect the Trust Property, and keep adequate records of the administration of the Trust.

2011 Amendment.

Changes are primarily stylistic to incorporate the amendment under ¶ 12.

2009 Amendment.

The phrase “officer of the court” was inserted as reminder of the Trustees’ station as such. *Estate of Thompson*, 426 Pa. 270, 275, 232 A.2d 625, 628 (1967); *In re Coleman’s Estate*, 456 Pa. 163, 168-169, 317 A.2d 631, 634 (1974) and is not intended to constitute any substantive change.

¶ 17. Intent of Settlor, Conflicts of Interests, Disclosure, Compliance with Applicable Standards.

(A) *Compliance with Fiduciary Standards.* It is the intent of the Settlor that the Trustee may act freely under all and any of the powers and authority granted in this Trust Agreement as to all matters concerning the Trust Property after forming a reasonable judgment based upon all of the circumstances of any particular situation as to the wisest and best court to pursue in the interest of the Trust and the Beneficiaries. The Trustee shall exercise his powers at all times in their fiduciary capacity solely in the interests of the Beneficiaries. If there is an inherent conflict of interest by virtue of an act or acts, or omission of an act or acts, the Trustee shall make full disclosure to the appropriate parties in interest on a timely basis. In managing the Trust, any outside fee, commission, or similar compensation not otherwise specified or prohibited within this Trust Agreement, shall be fully disclosed to the Beneficiaries,

(B) *Compliance with NCOPO Standards.* It is moreover the intent of the Settlor that the Trustee shall adhere to act in conformance with all applicable standards promulgated by NCOPO which may govern the Trust or any trustee. The Trustee shall undertake all reasonable efforts to facilitate as many Qualified Beneficiaries, candidates and nominees to adhere to and act in conformance with all applicable standards promulgated by NCOPO and as a condition of the End User License Agreement each Qualified Beneficiary, candidate or nominee so eligible for voting or non-voting membership in NCOPO shall maintain such membership. The Trustee shall contribute to NCOPO any excess funds and collect earmarked contributions and dues from Qualified Beneficiaries for NCOPO.

2011 Amendment.

Changes are primarily stylistic to incorporate the amendment under ¶ 2.

2009 Amendment.

The paragraph was divided into two subparagraphs. No substantive change was intended. The provision that excess funds may be contributed to the NCOPO is in furtherance of the Trust’s nature as charitable trust, in addition to acting as conduit for campaigns and Qualified Beneficiaries.

2008 Amendment.

The only change, while minor is significant.

¶ 18. Duty to Inform. The Trustee shall have and exercise the duty to inform and report to any and all

Beneficiaries as governed by the Uniform Trust Act. All Beneficiaries shall be informed of the fact of the Trust’s existence, the identity of the Settlor, the names, addresses, phone numbers and email addresses of the Trustee and each Ancillary Trustee, the right to receive a copy of this Trust Agreement and to receive not less than annually, a written report from the Trustee. Such annual report by the Trustee shall include, but not be limited to the assets, liabilities, receipts and disbursements of the Trust.

¶ 19. Trustee Compensation and Reimbursement of Expenses.

The Trustee shall be compensated the annual sum ten percent greater than the annual compensation of the highest paid chairman of the respective national party committees, or a sum not less than One Hundred Fifty Thousand Dollars and each Ancillary Trustee may be a commission predicated on contributions and End-User License fees paid by statewide or congressional candidates or any other funds advanced to the Trust solicited by the Ancillary Trustee, in accordance with law. The Trustee may be provided such additional benefits including pension, health and major medical insurance coverage as may be reasonable and prudent. All Ancillary Trustees shall be reimbursed for reasonably incurred out-of-pocket expenses for the administration of the Trust, which shall include meals, travel, and stationary, and for compensation and benefits for such full or part time administrative staff as may be reasonable and prudent and for legal counsel, *provided that*, any legal counsel retained by a Ancillary Trustee shall not duplicate the representation provided by general counsel. The Trustee shall receive no other compensation, including fees or honorariums for performing his duty or appearing in his official capacity as Trustee. All other income, obligations and interests shall be reported to all Beneficiaries in the same manner as is required of public officeholders in the state of which is the situs for the Trust.

2014 Amendment.

Changes are primarily stylistic to accommodate Bogert & Bogert, *Bogert on Trusts and Trustees* § 191 re advances by co-beneficiaries.

2011 Amendment.

Changes are primarily stylistic to incorporate the amendment under ¶ 12.

2009 Amendment.

No substantive changes were made and all such amendments were for clarification. Subparagraph (B) was amended to bring it into compliance with Pennsylvania decisional authority. The new subparagraph (E), in addition to the allowance for COLAs also provides for the allowance that full-time Trustees and staff personnel may pledge future income for i.e., securing a mortgage, provided that the Trust was made whole by reason of death, disability, resignation or removal by a financial instrument, primarily life insurance. This provision was included to remove doubt and to assure that no appearance of conflict of interest would arise if such future income was pledged, as well as to provide for the fullest protection properly due the Trust. Subparagraph (F) is elaborated upon and now requires annual reporting of outside income, obligations and interests as would be required of a candidate for public office or public officeholder under Pennsylvania law, in furtherance of the transparency required of exemplary standards under the Trust Purpose. The provision is not new however, as it merely provides the procedure for the requirement stated under ¶ 17.

2008 Amendment.

By virtue of this amendment, only the Trustee is compensated by a full-time salary, which is further amended by being either \$150,000 or ten percent greater than the salary compensation of the Republican National Chairman, so as to underscore that the Trustee is not to be lightly dismissed. The remaining co-trustees are no longer paid a salary, but are paid commissions of up to two percent of all contributions and statewide and Congressional candidates' end user licensee fees personally solicited. It is anticipated that this clause should satisfy the requirements imposed by law that compensation be reasonable value to service rendered.

¶ 20. Appointment of Agents and Independent Auditors. The Trustee shall have the power to appoint such agents upon establishing the scope and specific terms of delegation, consistent with the purposes and provisions of the Trust, including a firm responsible for the maintenance and upgrade of the Property Trust, legal counsel, and a certified public accountant to act as Treasurer, and provide such compensation that is reasonable. Each agent shall comply with the scope and terms of the delegation and shall exercise the delegated duties and powers with reasonable care, skill and caution and shall be liable to the Trust for failure to do so. Any agent possessing special skills or expertise shall diligently employ and use those special skills or expertise for the sole benefit of the Trust.

2009 Amendment.

The provisions reserving the right for the Settlor to designate an auditor was struck as surplusage.

2008 Amendment.

A new provision is added to allow the Settlor to designate the independent auditor when an audit becomes required by law, 10 P.S. § 162.5(f), the threshold being \$300,000 for an certified audit, a review is required if below \$300,000 but exceeding \$100,000. The reservation of this power remains so long as the Trust is not irrevocable per ¶ 9 re rights of amendment.

¶ 21. Authority to Grant Power of Attorney. The Trustee is authorized to delegate any powers under this Trust Agreement to an Attorney-in-Fact pursuant to a Special Power of Attorney for the purposes of carrying out the delegated assignment specified in the Special Power of Attorney. The Special Power of Attorney may be issued for any purpose by the Trustee to the recipient of that power; provided, however, that such power shall not exceed the terms, conditions, and powers of this Trust Agreement. Any third party being shown a Special Power of Attorney from the recipient of that power shall have a right without further investigation to rely upon the Special Power of Attorney.

¶ 22. Trust Expenses.

(A) *Expenses, Indemnification.* The Trustee shall have the authority to pay all costs, charges and expense of the Trust. The Qualified Beneficiaries agree to fully indemnify and hold harmless the Trustee, jointly and severally, against any and all liability on the part of the Trustee for lawful and proper acts within their powers and on account of ownership of the Trust Property to the fullest extent allowed by law

(B) *Allocation.* The Trustee shall have the power to budget the estimated annual income and expenses relative to access, benefit and use of the Trust Property in the manner as to equalize as far as possible the allocation of expenses among the Qualified Beneficiaries for the employment of the Trust Property, in addition to any campaign contributions raised by the Trustee.

(C) *Escrow.* The Trustee shall have the authority to require any Qualified Beneficiary to establish or maintain any account or accounting practice or procedure by which a campaign contribution by a donor for the express purpose of underwriting the Qualified Beneficiary's access to and use of the Property Trust is transferred forthwith from the account of the Qualified Beneficiary to the account of the Trust.

(D) *Addition to Property.* Nothing within this Trust Agreement shall abridge, inhibit, impair or otherwise prevent the Trustee from soliciting any campaign contributor or donor to proffer a contribution or donation for expenses incurred by the Trustee herein for addition to the Trust. 20 Pa.C.S. §7780.6(a)(9).

(E) *Endowment to Protect Against Deficiencies.* The Trustee shall set aside and maintain such reserves equal in sum to a reasonable expectation of expenses required for the protection of the Trust Property and administration of the trust for ten-years subsequent to the current fiscal year, and shall among other provisions, replenish such endowment from contributions resulting from use of the Trust Property unless otherwise prohibited by applicable law.

(F) *Prohibitions.* Nothing within this Trust Agreement shall be construed as to authorize the Trustee to perform any act which is in violation of Federal or state law but at no time shall the Trustees' authorization to perform any act which is permitted by law in the Commonwealth of Pennsylvania or any state be denied or deprived because of law within another state.

2009 Amendment.

The new subparagraph (E) elevates as a term of the Trust Agreement the provision within IOP Rule 10(e) governing Trust Endowment accounts, by assuring there is a ten-year reserve to protect the Trust against deficiencies. See e.g., *In re Sonnett's Estate*, 310 Pa. 463, 466, 165 A. 244, 245 (1933); *In re Sternberger's Estate*, 121 Pa.Super. 50, 53, 182 A. 723, 725 (1936); *In re Smith's Estate*, 385 Pa. 416, 419, 123 A.2d 623, 624-625 (1950).

2008 Amendment.

A provision is added to assure that the Trustees are fully indemnified by the beneficiaries, as per Bogert, *supra*, ¶ 718 (2d ed. Rev) at p. 319-320.

¶ 23. Adjustment for Tax Consequences. The Trustee shall have the power, in the Trustee's absolute discretion to take any action and to make any decision to minimize the tax liabilities of this Trust and its Beneficiaries and to otherwise assure compliance with the Internal Revenue Code of 1986.

¶ 24. Authorization and Limitations for Trustee to Modify Language. The Trustee is authorized to modify the language of the Trust as may be required by law or

upon the advice of counsel, provided however that such modification of language shall not materially affect the rights of Beneficiaries or the method by which the Trust would be taxed for any such modification. In the event that the Trustee attempts to bring about a modification in accordance with this paragraph and it is found to adversely affect the rights of any Beneficiary in any respect whatsoever, and/or the modification in any way which would adversely affect the taxation of the Trust or its Beneficiaries as it applies to income taxation or exercise of First Amendment rights, then such attempted modification of language shall be treated as *void ab inito*. In the event of an unintended result, the Trustee is directed to rescind all transactions that were performed under this paragraph allowing change of verbiage. Where necessary and appropriate, the Trustee is directed and authorized to obtain court approval to effectuate the rescission.

2008 Amendment.

The stricken language is eliminated as surplusage. Reference to the Philadelphia Orphans Court is replaced by generic reference, should the situs in the future, be removed from Philadelphia, as provided by the amendment to ¶ 26.

¶ 25. Right of Trustee to Petition Court.

Notwithstanding any other provision of this Trust Agreement, the Trustee is specifically authorized in their sole discretion to file a petition seeking a declaratory judgment or injunctive relief or pray for any and all other relief as may be just and appropriate with and in a court of competent jurisdiction for instructions and approval of any transaction concerning the Trust Property, including, but not limited to campaign contributions solicitations and accounting, distribution, tax questions, trust administration or any other question, which in the sole discretion of the Trustee, shall be determined by the court. The Trustee shall incur no expense in making a petition to the court, provided the petition is made in good faith, which is presumed.

ARTICLE III - GENERAL AND MISCELLANEOUS PROVISIONS

¶ 26. Situs of Trust, Offices.

(A) The situs of this Trust shall be the City and County of Philadelphia in and of the Commonwealth of Pennsylvania, to which applicable law and rules of procedure shall govern unless transferred to another situs by the Trustee. However no other state shall serve as situs of the trust if the law of the state imposes excessively restrictive campaign contribution limitations or which has not adopted the Uniform Trust Code promulgated by the National Conference of Commissioners on Uniform State Laws.

(B) The Trustee shall establish a General Office and such additional offices as they may deem advisable.

2009 Amendments.

Two paragraphs were consolidated into one. No substantive change was intended.

¶ 27. Communications, Delivery of Notices.

(A) *Notice by Qualified Beneficiary.* Each Qualified

Beneficiary shall provide the Trustee a current listing of name of officers, address, telephone number(s), URL and email addresses. It shall be the sole and exclusive duty and obligation of the Qualified Beneficiary to assure such name, address, phone number and email address is at all times current. Each Beneficiary shall provide his or her name, address, telephone number(s) and email address(es) in accordance with the Internal Operating Procedures which shall include such instructions indicating preference relative the Beneficiary's right of privacy, which at all times shall be fully protected by the Trustee.

(B) *Reference.* All inquiries and matters regarding administration of the Trust or the Trust Property and use thereof shall be directed to the Trustee at his office. All other notices as may be required shall be as provided by the Internal Operating Procedures.

(C) *Notice by Trustee.* All notices by the Trustee shall be provided by posting the same on the Trustees' URL and by transmission of an email address at the last known email address provided to the Trustee by the Qualified Beneficiary. 20 Pa.C.S. § 7709(a). All notices posted or transmitted by the Trustee shall include and convey the information required under 20 Pa.C.S. § 7780.2(i).

2011 Amendment.

Changes are primarily stylistic to incorporate the amendment under ¶ 12.

2009 Amendment.

No substantive changes are intended. The inclusion of the Trustee's duty to notify Qualified Beneficiaries and the contents of such notice merely restates governing law.

2008 Amendment.

Amended to reflect the reorganization of the Trustees.

¶ 28. Construction, Severability and Partial Invalidity.

The validity, effect and construction of this Trust shall be determined in accordance with the laws of the Commonwealth of Pennsylvania or any other state wherein the situs of the trust has been transferred. If any provision of this Trust Agreement is void, invalid, or unenforceable, the remaining provisions shall nevertheless be valid and carried into effect. If any Trust herein established exceeds the longest permissible period, it shall persist in its period for the longest period permissible, then terminate. The headings within this Trust Agreement are for convenience only and are not part of the text.

2008 Amendment.

References amended to be generic, if the Trust's situs is ever transferred outside of Pennsylvania.

¶ 29. Copies, Counterparts.

(A) Any person may rely on a copy, certified by a notary public, of the executed original of this Trust Agreement held by the Trustee, and of any of the notations on it and writings attached to it, as fully as he might rely on the original documents themselves. Any such person may rely fully on the statements of fact certified by anyone who appears from such original documents or from such certified copy to be a Trustee under this Trust Agreement. No one dealing with the Trustee need inquire concerning

the validity of anything the Trustee purport to do. No one dealing with the Trustee need to see the application of anything paid or transferred to or upon the orders of the Trustee of this Trust.

(B) This Trust Agreement may be executed in any number of counterparts and each shall constitute an original of one and the same instrument.

2009 Amendments.

Two paragraphs were consolidated into one. No substantive change was intended.

¶ 30. Definitions.

(A) The term “**any endorsed candidate or nominee**” as used in this Trust Agreement shall mean either any candidate for public or political office endorsed by any of the aforementioned national, state, county, municipal, ward, district or local committee of the Democratic or Republican Party or any nominee of the Democratic or Republican Party as elected or selected by virtue of a direct or indirect primary or nominating convention in accordance with applicable Federal or state law. The term shall not apply to any other candidate opposing any endorsed Democratic or Republican candidate or nominee of the Democratic or Republican Party, except by express written authorization of any of the aforementioned national, state, county, municipal, ward, district or local committees of the Democratic or Republican Party, of which such consent shall not be unreasonably withheld.

(B) The term “**association, campaign finance, election, revenue and trust laws**” as used in this Trust Agreement shall mean Chapter 51 of Title 15 of Pennsylvania Consolidated Statutes, entitled and cited as the Nonprofit Corporation Law of 1988; Title 25 of Pennsylvania Statutes, entitled and cited as the Election Code, Title 26 of the United States Code, entitled and cited as the Internal Revenue Code, and Chapter 77 of Title 24, Pennsylvania Consolidated Statutes, entitled and cited as the Uniform Trust Act, and any Federal or state equivalent of such statutes, in any other state which may be applicable to or govern transactions involving this Trust.

(C) The term “**Attorney General**” as used in this Trust Agreement shall mean such person or persons delegated by the Attorney General of the respective state which the Trust is situs thereof to exercise the *paren patraie* powers of the state and may include the general counsel and other regulatory authorities for matters delegated by law or consent of the Attorney General.

(D) The term “**beneficiary**” or any derivation thereof as used in this Trust Agreement shall mean any registered voter or person of adult age desiring to be a registered voter or any person not of adult age who desires to participate in the political party of his choice, i.e., the general public, in addition to the meaning such term shall have under the Uniform Trust Act. 20 Pa.C.S. § 7703. *Cf.* “Qualified Beneficiary.”

(E) The term “**FECA**” as used in this Trust Agreement shall mean Federal Election Campaign Act (FECA) of 1971, as amended, Pub.L. 92-225, 86 Stat. 3, 2 U.S.C. § 431, et seq. and shall include any amendments hereinafter.

(F) The term “**funds necessary for the trust to be**

undiminished and self-perpetual” as used in this Trust Agreement shall mean such funds that are necessary for the ongoing administration of the Trust independent of the expense of distributing the Trust Property which is tax-exempt under 26 U.S.C. § 501(c)(3).

(G) The term “**or any elected member**” or derivation thereof as used in this Trust Agreement shall mean the office of any member of any regularly constituted committee of the Democratic or Republican Party or duly qualified national, state, county, municipal, ward, district and local committees of the Democratic or Republican Party who upon being elected in a primary or election or by caucus or convention to such party office by popular vote, and entrusted by law to represent all electors therein the district for a term definite and tenure certain; and of which said powers, duties, and emoluments become vested in a successor when the office becomes vacant, and the chairman and treasurer of the such committees consisting of elected members, to which equitable interest shall attach. The term shall include any person lawfully appointed to fill a vacancy in such elected office until the next election as set forth by law. Any other member not directly or popularly elected is not an elected member.

(H) The term “**Qualified Beneficiary**” or any derivation thereof as used in this Trust Agreement shall mean “regularly constituted committee” or “duly qualified national, state, county, municipal, ward, district and local committees” of the Democratic or Republican Party or “any elected member” of any of the aforementioned, and who by virtue thereto, have a subordinate fiduciary duty to the Beneficiaries for distribution of the Trust Property, in addition to the meaning such term shall have under the Uniform Trust Act. 20 Pa.C.S. § 7703. *Cf.* “Beneficiary.”

(I) The terms “**regularly constituted committee**” or “**duly qualified national, state, county, municipal, ward, district and local committees**” as used in this Trust Agreement shall mean a committee authorized under applicable law as a permanent committee of the Democratic or Republican Party which consists of members chosen by the electorate in a primary, election or by caucus or convention by popular vote for a term definite and tenure certain; and of which said powers, duties, and emoluments become vested in a successor when the office becomes vacant, to which equitable interest shall attach. Reference to a state shall include also include the District of Columbia, Guam, Puerto Rico, U.S. Virgin Island, and any other territory of the United States. Reference to any county shall also include a similar reference, as to Parish (as in the case of the State of Louisiana) or Borough (as in the case of the State of Alaska). Reference to municipal shall also include, but not be limited to borough, city, town, township, village or any similar political division within any state. Reference to ward shall include any political division commonly known as a ward within any city, borough, or similar political subdivision, provided however, there exist a committee of the Democratic or Republican Party as provided by state law.

(J) The term “**responsible persons**” as used in this Trust Agreement shall convey the same intent and meaning as the term is used in Canon 7b(2) of the Code of Judicial

Conduct or its successor.

(K) The term “**subordinate committee**” as used in this Trust Agreement shall mean such subordinate committee as defined under 11 C.F.R. 100.14(c) and shall include but not be limited to such ancillary entities organized under the Internal Revenue Code, 26 U.S.C. §§ 501(c)(4) or 527 sanctioned by a Qualified Beneficiary any may include, upon certification by the appropriate Qualified Beneficiary, any connected organization as such is defined under 2 U.S.C. § 431(7).

(L) The term “**undue influence**” or any derivation thereof as used in this Trust Agreement shall mean any act or omission of any act committed in violation of the Civil Rights Act of 1957, Pub. L. 85–315, 71 Stat. 637, 42 U.S.C. § 1971(b) notwithstanding the absence of any Federal candidate on the ballot thereto.

(M) The term “**without interference or obstruction by any person or persons**” as used in this Trust Agreement shall mean any act or omission of act committed in violation of the Civil Rights Act of 1957, Pub. L. 85–315, 71 Stat. 637, 42 U.S.C. § 1971(b) notwithstanding the absence of any Federal candidate on the ballot thereto.

2014 Amendment

Subparagraphs (L) and (M) were amended by striking out language susceptible to vagueness with language that any act or omission of act in violation of the Civil Rights Act of 1957, 42 U.S.C. § 1971(b), so as to better articulate and put persons on notice as to what acts constitute breach of fiduciary duty and otherwise avoid any void for vagueness issues.

2011 Amendment.

Changes are primarily stylistic to incorporate the amendment under ¶ 12.

2009 Amendment.

Changes were stylistic only and terms placed in alphabetical order for the reader’s convenience. The only additional terms inserted were “Beneficiary” and “Qualified Beneficiary” in light of the distinction required of a trust organized for charitable purposes, 20 Pa.C.S. § 7735; *In re Pruner’s Estate*, 390 Pa. 592, 136 A.2d 107 (1957); and “undue influence” to indicate such meaning as provided by the Supreme Court in *McConnell v. FEC*, 540 U.S. 93 (2003) in addition to its more commonly accepted definition under Pennsylvania fiduciary case law, i.e. *Young v. Kaye*, 443 Pa. 335, 342, 279 A.2d 759, 763 (1971).

2009 Amendment.

Responding to the RNC Chief Counsel’s objection that the FEC could extrapolate the basis being actual users, i.e., qualified beneficiaries, in lieu of beneficiaries, as would be construed by Pennsylvania courts, the Trustees, pursuant to their powers under Art. II, ¶ 24, modified subsections (C) and (I) as further amplification and clarification of the Settlor’s intent, by inserting Pennsylvania court language in subsection (C) as “Which consists of members chosen by the electorate in a primary, election or by caucus or convention by popular vote for a term definite and tenure certain; and of which said powers, duties, and emoluments become vested in a successor when the office becomes vacant”

The same language appearing in (I) to firmly anchor the definition of precinct committee person to be the office and not any particular individual, as per the following language:

“* * * for a term definite and tenure certain; and of which said powers, duties, and emoluments become vested in a successor

when the office becomes vacant.”

This language assures that reference is to the office of precinct committee person, and not to any individual, and that the equitable interests of the Trust attaches only to the office and the occupant of that office, the equitable interests vested in his successor when the office becomes vacant. If the office is vacant, the equitable rights do not disappear, because the interest attaches to the office, available to any occupant upon being duly elected or appointed to fill the vacancy. Accordingly, RNC Chief Counsel’s objection is resolved in that the FEC cannot argue that basis, as governed by the Internal Revenue Code, 26 U.S.C. § 643(e) is to actual users, but instead, in accordance to Pennsylvania law, is to the office.

2008 Amendment.

Inserted within this paragraph to coincide with the term under Art. I, ¶ 2, re “Trust Purpose,” the term “or any elected member” is inserted to clarify who constitutes an elected beneficiary, and does include the chairman and treasurer (but no other officer) of the organizational beneficiary, if the chairman and treasurer are otherwise not individually elected committee-people. This inclusion is to assure no conflict with existing campaign finance laws, which in many states, mandates the election of chairman and treasurer. The insertion of the term “or any elected member” within this paragraph does not subtract from the fact that the term appears in the original as well as amended Trust Agreement under Art. I, ¶ 2.

While new, the term “funds necessary for the trust to be undiminished and self-perpetual” are to distinguish such funds as different as funds for campaign expenditures, per the ruling of the Pennsylvania General Counsel.

While new, the term “Attorney General” merely restates governing law and includes other state regulatory authorities with the consent of the Attorney General.

The term “subordinate committee” is new and enlarges upon the definition of “beneficiary” under ¶ 2 as to assure availability of the Trust Property to all Allied Republican Party Interests which are officially recognized by a national, state, county or local Republican Committee, and includes when required “connected organizations” as defined under 2 U.S.C. § 431(7) as well as other Allied Republican Party Interests which may be organized under 26 U.S.C. §§ 501(c)(4) or 527, provided such is sanctioned by a regularly constituted Republican Party Committee.

Adapted October 4, 2007.

Amended January 7, 2009.

Amended May 5, 2009.

Amended May 12, 2009.

Amended May 26, 2009.

Amended June 2, 2010.

Amended January 21, 2011.

Amended July 21, 2013.

Amended March 22, 2014

Applicable Provisions of the Uniform Trust Act

Subchapter

- A. General Provisions
- B. Judicial Proceedings
- C. Representation
- D. Creation, Validity, Modification and Termination of Trust
- E. Creditor's Claims; Spendthrift and Discretionary Trusts
- F. Revocable Trusts
- G. Office of Trustee
- H. Duties and Powers of Trustee
- I. Liability of Trustees and Rights of Persons Dealing with Trustees
- J. Miscellaneous Provisions

SUBCHAPTER A—GENERAL PROVISIONS

Sec.

- 7701. Short title of chapter - UTC 101.
- 7702. Scope of chapter - UTC 102.
- 7703. Definitions - UTC 103.
- 7704. Knowledge - UTC 104.
- 7705. Trust instrument controls; mandatory rules - UTC 105.
- 7706. Common law of trusts; principles of equity - UTC 106.
- 7707. Governing law - UTC 107.
- 7708. Situs of trust.
- 7709. Methods and waiver of notice - UTC 109.
- 7710. Notice; others treated as beneficiaries - UTC 110.
- 7710.1. Nonjudicial settlement agreements - UTC 111.
- 7710.2. Rules of construction - UTC 112.

§ 7701. Short title of chapter - UTC 101

Subchapters A (relating to general provisions) through I (relating to liability of trustees and rights of persons dealing -276- with trustees) shall be known and may be cited as the Uniform Trust Act.

§ 7702. Scope of chapter - UTC 102

This chapter applies to express trusts, charitable and noncharitable, and trusts created pursuant to a statute, judgment or decree that requires the trust to be administered in the manner of an express trust.

§ 7703. Definitions - UTC 103.

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

[1] "Action." With respect to an act of a trustee, includes a failure to act.

[2] "Beneficiary." A person that:

- ... (1) has a present or future beneficial interest in a trust, vested or contingent; or
- ... (2) in a capacity other than that of trustee or protector, holds a power of appointment over trust property.

[3] "Charitable trust." A trust, or portion of a trust, created for a charitable purpose described in section 7735(a) (relating to charitable purposes; enforcement - UTC 405).

[4] "Current beneficiary." A person 18 years of age or older to or for whom income or principal of a trust must be distributed currently or a person 25 years of age or older to or for whom income or principal of a trust may, in the trustee's discretion, be distributed currently.

[5] "Guardian." A person other than a guardian ad litem who is appointed by the court to make decisions regarding the property of an individual.

[6] "Interests of the beneficiaries." The beneficial interests provided in the trust instrument.

[7] "Jurisdiction." With reference to a geographic area, a country, state or county.

[8] "Power of withdrawal." The unrestricted power of a beneficiary, acting as a beneficiary and not as a trustee, to transfer to himself or herself the entire legal and beneficial interest in all or a portion of trust property. However, a power to withdraw the greater of the amount specified in section 2041(b)(2), 2503(b) or 2514(e) of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. §§ 2041(b)(2), 2503(b) or 2514(e)), or any lesser amount determined by reference to one or more of these provisions, may not be treated as a power of withdrawal.

[9] "Property." Anything that may be the subject of ownership, whether real or personal, legal or equitable, or any interest therein.

[10] "Qualified beneficiary." Assuming nonexercise of all testamentary powers of appointment, a beneficiary who on the date the beneficiary's qualification is determined:

- ... (1) is a distributee or permissible distributee of trust income or principal;
- ... (2) would be a distributee or permissible distributee of trust income or principal if the interests of the distributees described in paragraph (1) terminated on that date; or
- ... (3) would be a distributee or permissible distributee of trust income or principal if the trust terminated on that date.

[11] "Revocable trust." A trust is revocable to the extent the settlor, immediately before the time as of which the determination is made, had the power, acting without the consent of the trustee or any person holding an interest adverse to revocation, to prevent the transfer of the trust property at the settlor's death by revocation or amendment of or withdrawal of property from the trust.

[12] "Settlor." A person, including a testator, who creates or contributes property to a trust. If more than one person creates or contributes property to a trust, each person is a settlor of the portion of the trust property attributable to that person's contribution except to the extent another

person has the power to revoke or withdraw that portion.

[13] "Spendthrift provision." A provision in a trust instrument that restrains both voluntary and involuntary transfer of a beneficiary's interest.

[14] "Trust instrument." A will or other written instrument executed by the settlor that contains trust provisions, including any amendments thereto.

[15] "Trustee." Includes an original, additional and successor trustee and a cotrustee.

§ 7704. Knowledge - UTC 104.

(a) When person has knowledge.— For the purposes of this chapter and subject to subsection (b), a person has knowledge of a fact involving a trust if the person has:

- (1) actual knowledge of it;
- (2) received a notice or notification of it; or
- (3) reason to know it from all the facts and circumstances known to the person at the time in question.

(b) Employees.— For the purposes of this chapter, an organization that conducts activities through employees has notice or knowledge of a fact involving a trust only from the time the information was received by an employee having responsibility to act for the trust or would have been brought to the employee's attention if the organization had exercised reasonable diligence. An organization exercises reasonable diligence if it maintains reasonable routines for communicating significant information to the employee having responsibility to act for the trust and there is reasonable compliance with the routines. Reasonable diligence does not require an employee of the organization to communicate information unless the communication is part of the individual's regular duties or the individual knows a matter involving the trust would be materially affected by the information.

§ 7705. Trust instrument controls; mandatory rules - UTC 105.

(a) Trust instrument controls.— Except as provided in subsection (b), the provisions of a trust instrument prevail over any contrary provisions of this chapter.

(b) Mandatory rules.— Notwithstanding a contrary provision in the trust instrument, the following rules apply:

- (1) The requirements for creating a trust set forth in section 7732 (relating to requirements for creation - UTC 402).
- (2) The duty of a trustee to act in good faith and in accordance with the purposes of the trust as set forth in section 7771 (relating to duty to administer trust - UTC 801).
- (3) The requirement in section 7734 (relating to trust purposes - UTC 404) that a trust's purpose be lawful and not contrary to public policy.
- (4) The power of the court to modify or terminate a trust under sections 7740 (relating to termination of trusts; proceedings for termination or modification of trusts -

UTC 410) through 7740.6 (relating to modification to achieve settlor's tax objectives - UTC 416).

(5) The effect of a spendthrift provision and the rights of certain creditors and assignees to reach a trust as provided in Subchapter E (relating to creditor's claims; spendthrift and discretionary trusts).

(6) The power of the court under section 7762 (relating to trustee's bond - UTC 702).

(7) The power of the court under section 7768(b) (relating to compensation of trustee - UTC 708) to adjust a trustee's compensation specified in the trust instrument.

(8) The duty of a trustee under section 7780.3 (relating to duty to inform and report).

(9) (Reserved).

(10) The effect of an exculpatory term under section 7788 (relating to exculpation of trustee - UTC 1008).

(11) The rights under sections 7790 (relating to limitation on personal liability of trustee - UTC 1010) through 7790.3 (relating to certification of trust - UTC 1013) of a person other than a trustee or beneficiary.

(12) Periods of limitation for commencing a judicial proceeding.

(13) The power of the court to take action and exercise jurisdiction as may be necessary in the interests of justice.

(14) The subject matter jurisdiction of the court described in Chapter 7 (relating to orphans' court divisions) and venue for commencing a proceeding as provided in section 7714 (relating to venue - UTC 204).

Cross References. Section 7705 is referred to in section 7707 of this title.

§ 7706. Common law of trusts; principles of equity - UTC 106.

The common law of trusts and principles of equity supplement this chapter, except to the extent modified by this chapter or another statute of this Commonwealth.

§ 7707. Governing law - UTC 107.

The meaning and effect of the provisions of a trust instrument shall be determined by:

- (1) the law of the jurisdiction designated in the trust instrument, but the mandatory rules of section 7705(b) (relating to trust instrument controls; mandatory rules - UTC 105) shall govern if different from the law of the jurisdiction designated in the trust instrument; or
- (2) in the absence of an effective designation in the trust instrument, the law of the jurisdiction in which the settlor is domiciled when the trust becomes irrevocable.

§ 7708. Situs of trust.

(a) Specified in trust instrument.— Without precluding other means for establishing a sufficient connection with the designated jurisdiction, provisions of a trust instrument designating the situs of the trust are valid and controlling if:

- (1) a trustee's principal place of business is located in or a trustee is a resident of the designated jurisdiction;
- (2) all or part of the trust administration occurs in the designated jurisdiction; or
- (3) one or more of the beneficiaries resides in the

designated jurisdiction.

* * *

(c) Transfer.— By complying with subsections (d) and (e), the trustee may transfer the trust's situs to another jurisdiction if either immediately before or immediately after the proposed transfer:

(1) a trustee's principal place of business is located in or a trustee is a resident of the proposed jurisdiction;

(2) all or part of the trust administration occurs in the proposed jurisdiction; or

(3) one or more of the beneficiaries reside in the proposed jurisdiction.

(d) Notice of transfer.— The trustee shall notify the qualified beneficiaries of a proposed transfer of a trust's situs at least 60 days before the date as of which the trustee intends to change the situs. The notice of proposed transfer must include the following:

(1) The name of the jurisdiction to which the situs is to be transferred.

(2) The address and telephone number at the new location at which the trustee can be contacted.

(3) The reasons for the proposed transfer.

(4) The date on which the proposed transfer is anticipated to occur.

(5) A statement that if the situs is changed as the trustee proposes, venue will thereafter be in the county of the new situs consistent with section 7714 (relating to venue - UTC 204).

(6) The name and address of the court before which judicial actions involving the trust will be heard after the situs is changed as the trustee proposes.

(7) A statement that the change in situs will occur only if all qualified beneficiaries of the trust consent in writing to the change.

(e) Consent to transfer.— A trustee may transfer a trust's situs under this section without court approval if all the qualified beneficiaries of the trust consent in writing to the change.

(f) Successor trustee.— In connection with a transfer of the trust's situs, the trustee may transfer some or all of the trust property to a successor trustee designated in the trust instrument or appointed pursuant to section 7764 (relating to vacancy in trusteeship; appointment of successor - UTC 704).

(g) Court-directed change in situs.— A court having jurisdiction of a testamentary or inter vivos trust, on application of a trustee or any party in interest, after notice as the court shall direct and aided if necessary by the report of a master and after accounting as the court shall require, may direct, notwithstanding any other provision of this chapter, that the situs of the trust shall be changed to any other place within or without this Commonwealth if the court shall find the change necessary or desirable for the proper administration of the trust.

(h) Claims not discharged.— A change in situs under this

section does not discharge any claim against the trustee.

§ 7709. Methods and waiver of notice - UTC 109.

(a) Notice generally.— Notice to a person under this chapter or the sending of a document to a person under this chapter must be accomplished in a manner reasonably suitable under the circumstances and likely to result in receipt of the notice or document. Permissible methods of notice or for sending a document include first-class mail, personal delivery, delivery to the person's last known place of residence or place of business and a properly directed electronic message.

(b) Unknown identity or location.— Notice otherwise required under this chapter or a document otherwise required to be sent under this chapter need not be provided to a person whose identity or location is unknown to and not reasonably ascertainable by the trustee, but the trustee shall create and maintain indefinitely a written record of the steps the trustee took to identify or locate the person.

(c) Waiver.— Notice under this chapter or the sending of a document under this chapter may be waived in writing by the person to be notified or sent the document.

(d) Notice of judicial proceeding.— Notice of a judicial proceeding must be given as provided in the applicable rules of court.

§ 7710. Notice; others treated as beneficiaries - UTC 110.

(a) Notice.— Whenever notice to qualified or current beneficiaries of a trust is required under this chapter, the trustee must also give notice to any other beneficiary who has sent the trustee a written request for notice.

(b) Enforcement by charitable organization expressly named in instrument.— A charitable organization expressly named in the trust instrument to receive distributions from the trust has the rights of a beneficiary under this chapter.

(c) Enforcement by others.— A person appointed to enforce a trust created for the care of an animal or another noncharitable purpose as provided in section 7738 (relating to trust for care of animal - UTC 408) or 7739 (relating to noncharitable trust without ascertainable beneficiary - UTC 409) has the rights of a beneficiary under this chapter.

(d) Office of Attorney General.— The Office of Attorney General has the rights of a charitable organization expressly named in the trust instrument to receive distributions from a trust having its situs in this Commonwealth and the right to notice of any proceeding or nonjudicial settlement agreement in which there is a charitable interest or purpose.

§ 7710.1. Nonjudicial settlement agreements - UTC 111.

(a) (Reserved).

(b) General rule.— Except as otherwise provided in subsection (c), all beneficiaries and trustees of a trust may enter into a binding nonjudicial settlement agreement with respect to any matter involving the trust. The rules of Subchapter C (relating to representation) shall apply to a settlement agreement under this section.

(c) Exception.— A nonjudicial settlement agreement is valid only to the extent it does not violate a material purpose of the trust and includes terms and conditions that could be properly approved by the court under this chapter or other applicable law.

(d) Matters that may be resolved.— Matters that may be resolved by a nonjudicial settlement agreement include the following:

(1) The interpretation or construction of the provisions of a trust instrument.

(2) The approval of a trustee's report or accounting or waiver of the preparation of a trustee's report or accounting.

(3) Direction to a trustee to perform or refrain from performing a particular act.

(4) The resignation or appointment of a trustee and the determination of a trustee's compensation.

(5) Transfer of a trust's situs.

(6) Liability or release from liability of a trustee for an action relating to the trust.

(7) The grant to a trustee of any necessary or desirable power.

(8) The exercise or nonexercise of any power by a trustee.

(9) Questions relating to the property or an interest in property held as part of a trust.

(10) An action or proposed action by or against a trust or trustee.

(11) The modification or termination of a trust.

(12) An investment decision, policy, plan or program of a trustee.

(13) Any other matter concerning the administration of a trust.

(e) Request of court.— Any beneficiary or trustee of a trust may request the court to approve a nonjudicial settlement agreement to determine whether the representation as provided in Subchapter C was adequate or whether the agreement contains terms and conditions the court could have properly approved.

Cross References. Section 7710.1 is referred to in section 7721 of this title.

§ 7710.2. Rules of construction - UTC 112.

The rules of construction that apply in this Commonwealth to the provisions of testamentary trusts also apply as appropriate to the provisions of inter vivos trusts.

SUBCHAPTER B — JUDICIAL PROCEEDINGS

Sec.

7711. Role of court in administration of trust - UTC 201.

7712. Jurisdiction over trustee and beneficiary - UTC 202.

7713. (Reserved).

7714. Venue - UTC 204.

Cross References. Subchapter B is referred to in section 7701 of this title.

§ 7711. Role of court in administration of trust - UTC 201.

(a) Judicial intervention.— The court may intervene in the administration of a trust to the extent its jurisdiction is invoked by an interested person or as provided by law.

(b) Judicial supervision.— A trust is not subject to continuing judicial supervision unless ordered by the court.

(c) Scope of proceeding.— A judicial proceeding involving a trust may relate to any matter involving the trust's administration, including a request for declaratory judgment.

§ 7712. Jurisdiction over trustee and beneficiary - UTC 202.

(a) Personal jurisdiction over trustee.— By accepting the trusteeship of a trust having its situs in this Commonwealth or by moving the situs to this Commonwealth, the trustee submits personally to the jurisdiction of the courts of this Commonwealth regarding any matter involving the trust.

(b) Personal jurisdiction over beneficiary.— With respect to their interests in the trust, the beneficiaries of a trust having its situs in this Commonwealth are subject to the jurisdiction of the courts of this Commonwealth regarding any matter involving the trust. By not releasing or disclaiming the beneficiary's beneficial interest in the trust, a beneficiary of a trust having its situs in this Commonwealth submits personally to the jurisdiction of the courts of this Commonwealth regarding any matter involving the trust.

(c) Additional jurisdictional methods.— This section does not preclude other methods of obtaining jurisdiction over a trustee, beneficiary or other person receiving property from the trust.

§ 7713. (Reserved).

§ 7714. Venue - UTC 204.

(a) General rule.— Except as otherwise provided in subsection (b), venue for a judicial proceeding involving a trust is in the county of this Commonwealth in which the trust's situs is located and, if the trust is created by will and the estate is not yet closed, in the county in which the decedent's estate is being administered.

(b) Exceptions.—

(1) If a trust has no trustee, venue for a judicial proceeding for the appointment of a trustee is in:

... (i) any county in which a beneficiary resides;

... (ii) any county in which trust property is located; or
... (iii) if the trust is created by will, the county in which the decedent's estate was or is being administered.

(2) The venue of proceedings that are pending on the effective date of this section shall not be disturbed.

Cross References. Section 7714 is referred to in sections 7705, 7708 of this title.

SUBCHAPTER C — REPRESENTATION

Sec.

7721. Scope; definition of trust matter.

7722. Representation of parties in interest in general.

7723. Representatives and persons represented.

7724. Appointment of representative.

7725. Notice of representation.

7726. Representation ineffective if person objects.

Cross References. Subchapter C is referred to in sections 7701, 7710.1, 7740.1 of this title.

§ 7721. Scope; definition of trust matter.

(a) Scope.— This subchapter shall apply to this entire chapter unless the context clearly specifies the contrary.

(b) Definition.— As used in this subchapter, the term "trust matter" includes a judicial proceeding and a nonjudicial settlement, agreement or act pertaining to any matter listed in section 7710.1(d) (relating to nonjudicial settlement agreements - UTC 111).

§ 7722. Representation of parties in interest in general.

(a) Judicial proceeding.— In a judicial proceeding involving a trust matter, an order or decree of the court that binds the representative or representatives is binding upon a person, class of persons or both represented in accordance with section 7723 (relating to representatives and persons represented) if the trustee notifies the representatives in writing whom they represent, they do not decline the representation as provided in section 7725 (relating to notice of representation) and they act in good faith.

(b) Nonjudicial resolution.— In a nonjudicial resolution of a trust matter, notice to, the consent or approval of or the waiver or release by the representative or representatives is binding upon a person, class of persons or both represented in accordance with section 7723 if the trustee notifies the representatives in writing whom they represent, they do not decline the representation as provided in section 7725 and they act in good faith.

(c) Permissible consideration.— In making decisions, a representative may consider general benefit accruing to the living members of the family of the person represented.

§ 7723. Representatives and persons represented.

The following rules except as set forth in paragraph (7) apply to the extent there is no conflict of interest with respect to the matter at issue between the representative

and the person or persons represented that might affect the impartiality of the representative and, if two or more persons are being represented, to the extent there is no conflict of interest with respect to the matter at issue between or among the persons represented that might affect the impartiality of the representative:

(1) A plenary guardian represents the person whose estate the guardian supervises, and a limited guardian represents the person whose estate the guardian supervises within the scope of authority prescribed by the court order that defines the guardian's authority.

(2) An agent under a general power of attorney represents the agent's principal, and an agent under a limited power of attorney represents the principal within the scope of the agent's authority under the power of attorney.

(3) Where property or an interest in property is vested in a class of persons, the living sui juris class members represent the class members who are minors, unborn, unknown or unascertained.

(4) Where property or an interest in property will pass to a class of persons upon the occurrence of a future event, the living sui juris class members represent the class members who are minors, unborn, unknown or unascertained. The class members entitled to represent other class members or potential class members are the persons who would take the property or interest in property if the future event had occurred immediately before the commencement of the judicial proceeding relating to the property or interest in property or immediately before the effective date of the nonjudicial resolution of the matter.

(5) Where property or an interest in property will pass to a person, class of persons or both upon the occurrence of a future event, but the property or interest in property will pass to another person, class of persons or both upon the occurrence of an additional future event, the person, class of persons or both who would take upon the occurrence of the first event represents the person, class of persons or both who would take upon the occurrence of the additional event, provided their interests are identical or substantially similar for purposes of the particular trust matter. If a class of persons would take upon the occurrence of the first event, paragraph (4) applies to representation between or among the class.

(6) A person represents all minors or unborn individuals and persons whose identity or location is unknown and not reasonably ascertainable, to the extent such persons are not otherwise represented, if the interests of the person and the person represented are substantially identical with respect to the particular question or dispute involved.

(7) Whether or not there is a conflict of interest described in this section, the sole holder or all coholders of a presently exercisable or testamentary power of appointment represent all potential appointees and all takers in default of exercise of the power of appointment if the holder may appoint to:

... (i) the holder's estate, the holder's creditors or the creditors of the holder's estate; or

... (ii) anyone other than the holder's estate, the holder's creditors and the creditors of the holder's estate.

(8) The sole holder or all coholders of a presently

exercisable or testamentary power of appointment not described in paragraph (7) represent all potential appointees and all takers in default of exercise of the power who are also potential appointees.

(9) Except as provided in paragraph (1), a person represents the person's minor and unborn descendants.

Cross References. Section 7723 is referred to in sections 7722, 7724 of this title.

§ 7724. Appointment of representative.

Notwithstanding any other provision of this subchapter, if in any judicial proceeding involving a trust matter the court determines that the representation provided by section 7723 (relating to representatives and persons represented) is or might be inadequate, the court may appoint a guardian ad litem or trustee ad litem to represent the inadequately represented person, class of persons or both.

§ 7725. Notice of representation.

A person representing another must be given written notice by the trustee that the person is representing the other person. The person to whom the notice is given may decline the representation by a writing that is given to the trustee no later than 60 days after receipt of the trustee's notice.

Cross References. Section 7725 is referred to in section 7722 of this title.

§ 7726. Representation ineffective if person objects.

Notwithstanding the provisions of this subchapter, a person may not represent another who is sui juris and files a written objection to representation with the trustee.

SUBCHAPTER D CREATION, VALIDITY, MODIFICATION AND TERMINATION OF TRUST
Sec.

7731. Creation of trust - UTC 401.

7732. Requirements for creation - UTC 402.

7733. Written trusts created in other jurisdictions - UTC 403.

7734. Trust purposes - UTC 404.

7735. Charitable purposes; enforcement - UTC 405.

7736. Creation of trust induced by fraud, duress or undue influence - UTC 406.

7737. Oral trusts unenforceable.

7738. Trust for care of animal - UTC 408.

7739. Noncharitable trust without ascertainable beneficiary - UTC 409.

7740. Termination of trusts; proceedings for termination or modification of trusts - UTC 410.

7740.1. Modification or termination of noncharitable irrevocable trust by consent - UTC 411.

7740.2. Modification or termination of noncharitable irrevocable trust by court - UTC 412.

7740.3. Charitable trusts - UTC 413.

7740.4. Modification or termination of noncharitable trust - UTC 414.

7740.5. Reformation to correct mistakes - UTC 415.

7740.6. Modification to achieve settlor's tax objectives - UTC 416.

7740.7. Division of trusts.

7740.8. Combination of trusts.

Cross References. Subchapter D is referred to in section 7701 of this title.

§ 7731. Creation of trust - UTC 401.

A trust may be created by:

(1) transfer of property under a written instrument to another person as trustee during the settlor's lifetime or by will or other written disposition taking effect upon the settlor's death;

(2) written declaration, signed by or on behalf and at the direction of the owner of property as required by section 7732 (relating to requirements for creation - UTC 402), that the owner holds identifiable property as trustee; or

(3) written exercise of a power of appointment in favor of a trustee.

§ 7732. Requirements for creation - UTC 402.

(a) Requirements.— A trust is created only if:

(1) the settlor has capacity to create a trust;

(2) the settlor signs a writing that indicates an intention to create the trust and contains provisions of the trust;

(3) the trust has a definite beneficiary or is:

... (i) a charitable trust;

... (ii) a trust for the care of an animal, as provided in section 7738 (relating to trust for care of animal - UTC 408); or

... (iii) a trust for a noncharitable purpose, as provided in section 7739 (relating to noncharitable trust without ascertainable beneficiary - UTC 409);

(4) the trustee has duties to perform; and

(5) the same person is not the sole trustee and sole beneficiary of the trust.

(b) (Reserved).

* * *

Cross References. Section 7732 is referred to in sections 7705, 7731 of this title.

* * *

§ 7734. Trust purposes - UTC 404.

A trust may be created only to the extent its purposes are lawful and not contrary to public policy.

Cross References. Section 7734 is referred to in section 7705 of this title.

§ 7735. Charitable purposes; enforcement - UTC 405.

(a) Purposes.— A charitable trust may be created for the relief of poverty, the advancement of education or religion, the promotion of health, governmental or municipal purposes or other purposes the achievement of which is beneficial to the community.

(b) Selection by court.— If the provisions of a charitable trust instrument do not indicate or authorize the trustee to select a particular charitable purpose or beneficiary, the court may select one or more charitable purposes or beneficiaries. The selection must be consistent with the settlor's intention to the extent it can be ascertained.

(c) Proceeding to enforce trust.— A proceeding to enforce a charitable trust may be brought by the settlor during the settlor's lifetime or at any time by the Attorney General, a charitable organization expressly named in the trust instrument to receive distributions from the trust or any other person who has standing to do so.

Cross References. Section 7735 is referred to in section 7703 of this title.

* * *

§ 7740. Termination of trusts; proceedings for termination or modification of trusts - UTC 410.

* * *

(c) Administrative deviation.— A court may modify an administrative provision of a charitable trust to the extent necessary to preserve the trust.

(d) Administrative termination of small charitable trusts.— A trust solely for charitable purposes having assets of less than \$100,000 may be terminated at its inception or at any time thereafter by the trustee with the consent of the Attorney General and all charitable organizations that are designated as beneficiaries by name in the trust instrument. Upon termination, the assets, subject to the approval of the Attorney General, shall be delivered to the organizations, if any, designated in the trust instrument or, if none, to organizations selected by the trustee, in either case to be held and applied for the general or specific charitable purposes and on the terms that will, in the trustee's discretion, fulfill as nearly as possible the settlor's intention.

(e) Judicial termination of charitable trusts.— If the separate existence of a trust, whenever created, solely for charitable purposes results or will result in administrative expense or other burdens unreasonably out of proportion to the charitable benefits, the court may, upon application of the trustee or any interested person and after notice to the Attorney General, terminate the trust, either at its inception or at any time thereafter, and award the assets outright, free of the trust, to the charitable organizations, if any, designated in the trust instrument or, if none, to charitable organizations selected by the court, in either case for the purposes and on the terms that the court may direct to fulfill as nearly as possible the settlor's intentions other than any intent to continue the trust, if the court is satisfied that the charitable organizations will properly use or administer the assets.

Cross References. Section 7740.3 is referred to in sections 7705, 7740 of this title.

* * *

§ 7740.5. Reformation to correct mistakes - UTC 415.

The court may reform a trust instrument, even if unambiguous, to conform to the settlor's probable intention if it is proved by clear and convincing evidence that the settlor's intent as expressed in the trust instrument was affected by a mistake of fact or law, whether in expression or inducement. The court may provide that the modification have retroactive effect.

Cross References. Section 7740.5 is referred to in sections 7705, 7740 of this title.

§ 7740.6. Modification to achieve settlor's tax objectives - UTC 416.

The court may modify a trust instrument in a manner that is not contrary to the settlor's probable intention in order to achieve the settlor's tax objectives. The court may provide that the modification have retroactive effect.

Cross References. Section 7740.6 is referred to in sections 7705, 7740 of this title.

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SUBCHAPTER E CREDITOR'S CLAIMS; SPENDTHRIFT AND DISCRETIONARY TRUSTS
Sec.

7741. Rights of beneficiary's creditor or assignee - UTC 501.

7742. Spendthrift provision - UTC 502.

7743. Exceptions to spendthrift provision - UTC 503.

7744. Discretionary trusts; effect of standard - UTC 504.

7745. Creditor's claim against settlor - UTC 505(a).

7746. Overdue distribution - UTC 506.

7747. Personal obligations of trustee - UTC 507.

7748. Property subject to power of withdrawal - UTC 505(b).

Cross References. Subchapter E is referred to in sections 7701, 7705 of this title.

§ 7741. Rights of beneficiary's creditor or assignee - UTC 501.

A judgment creditor or assignee of the beneficiary may reach the beneficiary's interest by attachment of present or future distributions to or for the benefit of the beneficiary or other means to the extent the beneficiary's interest is not subject to a spendthrift provision.

§ 7742. Spendthrift provision - UTC 502.

(a) Validity.— A spendthrift provision is valid only if it restrains both voluntary and involuntary transfer of a beneficiary's interest.

(b) Creation.— A trust instrument providing that the interest of a beneficiary is held subject to a "spendthrift trust," or words of similar import, is sufficient to restrain both voluntary and involuntary transfer of the beneficiary's interest.

(c) Effect.— A beneficiary may not transfer an interest in a trust in violation of a valid spendthrift provision. Except as otherwise provided in this subchapter, a creditor or assignee of the beneficiary of a spendthrift trust may not reach the interest or a distribution by the trustee before its receipt by the beneficiary.

§ 7743. Exceptions to spendthrift provision - UTC 503.
(a) (Reserved).

(b) Who may override.— A spendthrift provision is unenforceable against:

(1) a beneficiary's child who has a judgment or court order against the beneficiary for support or maintenance, to the extent of the beneficiary's interests in the income and principal of the trust;

(2) any other person who has a judgment or court order against the beneficiary for support or maintenance, to the extent of the beneficiary's interest in the trust's income;

(3) a judgment creditor who has provided services for the protection of the beneficiary's interest in the trust; and

(4) a claim of the United States or the Commonwealth to the extent Federal law or a statute of this Commonwealth provides.

(c) Remedy if unenforceable.— A claimant against whom a spendthrift provision cannot be enforced may obtain from a court an order attaching present or future distributions to or for the benefit of the beneficiary. The court may limit the award to such relief as is appropriate under the circumstances.

(d) Definition.— As used in this section, the term "child" includes any person for whom an order or judgment for child support has been entered in this Commonwealth or another state.

§ 7744. Discretionary trusts; effect of standard - UTC 504.

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§ 7745. Creditor's claim against settlor - UTC 505.

* * *

§ 7746. Overdue distribution - UTC 506.

(a) Distribution not made within reasonable time.— Whether or not the interest of the beneficiary in the trust is subject to a spendthrift provision, a creditor or assignee of a beneficiary may reach a mandatory distribution of income or principal, including a distribution upon termination of the trust, if the trustee has not made the distribution to the beneficiary within a reasonable time after the mandated distribution date.

(b) Definition.— As used in this section, the term "mandatory distribution" means a distribution of income or principal that the trustee is required by the trust instrument to make to a beneficiary, including a distribution upon the termination of the trust. The term

excludes a distribution that is subject to the exercise of the trustee's discretion regardless of whether the trust instrument includes a support or other standard to guide the trustee in making distribution decisions or provides that the trustee "may" or "shall" make discretionary distributions, including distributions pursuant to a support or other standard.

§ 7747. Personal obligations of trustee - UTC 507.

Trust property is not subject to personal obligations of the trustee even if the trustee becomes insolvent or bankrupt.

§ 7748. Property subject to power of withdrawal - UTC 505(b).

Trust property that is subject to a power of withdrawal, during the period the power may be exercised and after its lapse, release or waiver, may be reached by a creditor or an assignee of the holder of the power whether or not the interest of the holder in the trust is subject to a spendthrift provision.

SUBCHAPTER F —REVOCABLE TRUSTS

Sec.

7751. Capacity of settlor of revocable trust - UTC 601.

7752. Revocation or amendment of revocable trust - UTC 602.

7753. Trustee's duties; powers of withdrawal - UTC 603.

7754. Actions contesting validity of revocable trust.

7755. Claims and distribution after settlor's death.

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Cross References. Subchapter F is referred to in section 7701 of this title.

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SUBCHAPTER G —OFFICE OF TRUSTEE

Sec.

7761. Accepting or declining trusteeship - UTC 701.

7762. Trustee's bond - UTC 702.

7763. Cotrustees - UTC 703.

7764. Vacancy in trusteeship; appointment of successor - UTC 704.

7765. Resignation of trustee; filing resignation.

7766. Removal of trustee - UTC 706.

7767. Delivery of property by former trustee - UTC 707.

7768. Compensation of trustee - UTC 708.

7769. Reimbursement of expenses - UTC 709.

7770. Liability of successor trustee.

Cross References. Subchapter G is referred to in section 7701 of this title.

§ 7761. Accepting or declining trusteeship - UTC 701.

(a) Accepting trusteeship.— Except as otherwise provided in subsection (c), a person designated as trustee accepts the trusteeship:

(1) by substantially complying with a method of acceptance provided in the trust instrument; or

(2) if the trust instrument does not provide a method or the method provided in the trust instrument is not

expressly made exclusive, by accepting delivery of the trust property, exercising powers or performing duties as trustee or by otherwise indicating acceptance of the trusteeship.

* * *

§ 7762. Trustee's bond - UTC 702.

(a) When required.— A trustee shall give bond to secure performance of the trustee's duties only if the court finds that a bond is needed to protect the interests of the beneficiaries or is required by the provisions of the trust instrument and the court has not dispensed with the requirement.

(b) Judicial authority.— The court may specify the amount of a bond, its liabilities and whether sureties are necessary. The court may modify or terminate a bond at any time.

(c) Institutional trustees.— An institution qualified to do trust business in this Commonwealth need not give bond even if required by the trust instrument.

Cross References. Section 7762 is referred to in section 7705 of this title.

§ 7763. Cotrustees - UTC 703.

* * *

§ 7764. Vacancy in trusteeship; appointment of successor - UTC 704.

(a) When vacancy occurs.— A vacancy in a trusteeship occurs if:

- (1) a person designated as trustee rejects the trusteeship;
- (2) a person designated as trustee cannot be identified or does not exist;
- (3) a trustee resigns;
- (4) a trustee is disqualified or removed;
- (5) a trustee dies; or
- (6) a trustee is determined by the court to be incapacitated pursuant to section 5511 (relating to petition and hearing; independent evaluation).

(b) Filling of vacancy.— A vacancy in a trusteeship need not be filled if one or more cotrustees remain in office and the trust instrument does not require that it be filled. A vacancy shall be filled if the trust has no remaining trustee.

(c) Filling vacancy for noncharitable trust.— A vacancy in a trusteeship of a noncharitable trust that is required to be filled shall be filled in the following order of priority:

- (1) by a person designated in or pursuant to the provisions of the trust instrument to act as successor trustee;
- (2) by a person appointed by unanimous written agreement of the qualified beneficiaries; or
- (3) by a person appointed by the court.

(d) Filling vacancy for charitable trust.— A vacancy in a trusteeship of a charitable trust that is required to be filled shall be filled in the following order of priority:

- (1) by a person designated in or under the provisions of the trust instrument to act as successor trustee;
- (2) by a person selected by unanimous written agreement of the qualified beneficiaries if the Office of Attorney General concurs in the selection; or
- (3) by a person appointed by the court.

(e) Appointment by court.— Whether or not a vacancy in a trusteeship exists or is required to be filled, the court may appoint an additional trustee or special fiduciary if the court considers the appointment desirable for the administration of the trust.

(f) Filing appointment.— An appointment of a trustee and an acceptance of an appointment of a trustee may be filed with the clerk of court having jurisdiction over the trust.

Cross References. Section 7764 is referred to in section 7708 of this title.

§ 7765. Resignation of trustee; filing resignation.

(a) Court approval.— A trustee may resign with court approval.

(b) Without court approval if authorized by trust instrument.— A trustee may resign without court approval if authorized to resign by the trust instrument.

(c) Without court approval and without authorization in trust instrument.—

- (1) Unless expressly provided to the contrary in the trust instrument, an individual trustee may resign without court approval and without authorization in the trust instrument if:
 - ... (i) there is at least one cotrustee and all cotrustees consent in writing to the resignation; and
 - ... (ii) all the qualified beneficiaries consent in writing to the resignation.

(2) This subsection shall not authorize the sole trustee of a trust to resign unless the trust instrument names a successor trustee or provides a method for appointing a successor trustee, and in either case the resignation shall not be effective until the successor trustee accepts the appointment in writing.

(d) Liability.— The resignation of a trustee shall not by itself relieve the resigning trustee of liability in connection with the administration of the trust.

(e) Filing resignation.— A resignation of a trustee may be filed with the clerk of the court having jurisdiction over the trust.

§ 7766. Removal of trustee - UTC 706.

(a) Request to remove trustee; court authority.— The settlor, a cotrustee or a beneficiary may request the court to remove a trustee or a trustee may be removed by the court on its own initiative.

(b) When court may remove trustee.— The court may remove a trustee if it finds that removal of the trustee best serves the interests of the beneficiaries of the trust and is not inconsistent with a material purpose of the trust, a suitable cotrustee or successor trustee is available and:

- (1) the trustee has committed a serious breach of trust;
- (2) lack of cooperation among cotrustees substantially impairs the administration of the trust;
- (3) the trustee has not effectively administered the trust because of the trustee's unfitness, unwillingness or persistent failures; or
- (4) there has been a substantial change of circumstances.

(c) Court remedies.— Pending a final decision on a request to remove a trustee, or in lieu of or in addition to removing a trustee, the court may order appropriate relief under section 7781(b) (relating to remedies for breach of trust - UTC 1001) as may be necessary to protect the trust property or the interests of the beneficiaries.

(d) Procedure.— The procedure for removal and discharge of a trustee and the effect of removal and discharge shall be the same as that set forth in sections 3183 (relating to procedure for and effect of removal) and 3184 (relating to discharge of personal representative and surety).

Cross References. Section 7766 is referred to in section 7781 of this title.

§ 7767. Delivery of property by former trustee - UTC 707.

(a) Duties and powers of trustee.— Unless a cotrustee remains in office or the court otherwise orders, a trustee who has resigned or been removed has the duties of a trustee and the powers necessary to protect the trust property until the trust property is delivered to a successor trustee or other person entitled to it.

(b) Delivery of trust property.— A trustee who has resigned or been removed shall proceed expeditiously to deliver the trust property within the trustee's possession to the cotrustee, successor trustee or other person entitled to it.

§ 7768. Compensation of trustee - UTC 708.

(a) If unspecified.— If neither the trust instrument nor a separate written agreement signed by the settlor or anyone who is authorized by the trust instrument to do so specifies the trustee's compensation, the trustee is entitled to compensation that is reasonable under the circumstances. Neither a compensation provision in a trust instrument nor a fee agreement governs compensation payable from trust principal unless it explicitly so provides.

(b) If specified; adjustment.— If a trust instrument or written fee agreement signed by the settlor or anyone who is authorized by the trust instrument to do so specifies a trustee's compensation, the trustee is entitled to the specified compensation. The court may allow reasonable compensation that is more or less than that specified if:

- (1) the duties of the trustee have become substantially

different from those contemplated when the trust was created or when the fee agreement was executed;

(2) the compensation specified in the trust instrument or fee agreement would be unreasonable; or

(3) the trustee performed extraordinary services, and the trust instrument or fee agreement does not specify the trustee's compensation for those services.

(c) Entitlement not barred.— None of the following shall bar a trustee's entitlement to compensation from the income or principal of the trust:

(1) The trust is perpetual or for any other reason has not yet terminated.

(2) The trustee's term of office has not yet ended.

(3) The trustee of a testamentary trust also acted as a personal representative of the settlor and was or might have been compensated for services as a personal representative from the principal of the settlor's estate.

(d) Court authority.— In determining reasonable compensation, the court may consider, among other facts, the market value of the trust and may determine compensation as a fixed or graduated percentage of the trust's market value. The court may allow compensation from principal, income or both and determine the frequency with which compensation may be collected. Compensation at levels that arise in a competitive market shall be presumed to be reasonable in the absence of compelling evidence to the contrary.

* * *

Cross References. Section 7768 is referred to in section 7705 of this title.

§ 7769. Reimbursement of expenses - UTC 709.

(a) Reimbursement from trust property.— A trustee is entitled to be reimbursed out of the trust property, with interest as appropriate, for:

(1) expenses that were properly incurred in the administration of the trust; and

(2) to the extent necessary to prevent unjust enrichment of the trust, expenses that were not properly incurred in the administration of the trust.

(b) Advance.— An advance by the trustee of money for the protection of the trust gives rise to a lien against trust property to secure reimbursement with reasonable interest.

§ 7770. Liability of successor trustee.

A successor trustee shall not be personally liable for the acts or omissions of the trustee's predecessor and shall have no duty to investigate the acts or omissions of the predecessor.

Cross References. Section 7770 is referred to in section 7780.1 of this title.

SUBCHAPTER H —DUTIES AND POWERS OF TRUSTEE

Sec.

7771. Duty to administer trust - UTC 801.

7772. Duty of loyalty - UTC 802.
7773. Impartiality - UTC 803.
7774. Prudent administration - UTC 804.
7775. Costs of administration - UTC 805.
7776. Trustee's skills - UTC 806.
7777. Delegation by trustee.
7778. Powers to direct - UTC 808.
7779. Control and protection of trust property - UTC 809.
7780. Recordkeeping and identification of trust property - UTC 810.
7780.1. Enforcement and defense of claims - UTC 811.
7780.2. (Reserved).
7780.3. Duty to inform and report.
7780.4. Discretionary powers.
7780.5. Powers of trustees - UTC 815.
7780.6. Illustrative powers of trustee.
7780.7. Distribution upon termination.

Cross References. Subchapter H is referred to in section 7701 of this title.

§ 7771. Duty to administer trust - UTC 801.

Upon acceptance of a trusteeship, the trustee shall administer the trust in good faith, in accordance with its provisions and purposes and the interests of the beneficiaries and in accordance with applicable law.

Cross References. Section 7771 is referred to in section 7705 of this title.

§ 7772. Duty of loyalty - UTC 802.

(a) Duty of trustee.— A trustee shall administer the trust solely in the interests of the beneficiaries.

(b) Effect of conflict of interest.— Subject to the rights of persons dealing with or assisting the trustee as provided in section 7790.2 (relating to protection of person dealing with trustee - UTC 1012), a sale, purchase, exchange, encumbrance or other disposition of property between a trust and either the trustee in the trustee's individual capacity or one of the persons identified in subsection (c) is voidable by a court upon application by a beneficiary affected by the transaction unless:

- (1) the transaction was authorized by the trust instrument;
- (2) the transaction was approved by the court;
- (3) the beneficiary did not commence a judicial proceeding within the time allowed by section 7785 (relating to limitation of action against trustee);
- (4) the beneficiary consented to the trustee's conduct, ratified the transaction or released the trustee in compliance with section 7789 (relating to beneficiary's consent, release or ratification - UTC 1009); or
- (5) the transaction involves a contract entered into or claim acquired by the trustee before the person became or contemplated becoming a trustee.

(c) What constitutes conflict of interest.— A sale, purchase, exchange, encumbrance or other disposition of property is presumed to be affected by a conflict between personal and fiduciary interests if it is entered into by the trustee with:

- (1) the trustee's spouse;
- (2) the trustee's parent or a spouse of the parent;
- (3) a descendant of the trustee's parent or a spouse of the descendant;
- (4) an agent of the trustee unless the trustee is a corporation and the agent is an affiliate of the corporation or the transaction is authorized by section 7209 (relating to mutual funds);
- (5) a corporation or other person or enterprise in which the trustee or a person that owns a significant interest in the trustee has an interest that might affect the trustee's judgment, but this paragraph does not apply to an affiliate of a corporate trustee or to a transaction authorized by section 7209; or
- (6) the trustee personally.

(d) Transactions between trustee and beneficiary.— A transaction between a trustee and a beneficiary that does not concern trust property but that occurs during the existence of the trust or while the trustee retains significant influence over the beneficiary and from which the trustee obtains an advantage is voidable by a court upon application by the beneficiary unless the trustee establishes that the transaction was fair to the beneficiary.

(e) Conflict regarding trust opportunity.— A transaction not concerning trust property in which the trustee engages in the trustee's individual capacity involves a conflict between personal and fiduciary interests if the transaction concerns an opportunity properly belonging to the trust.

(f) (Reserved).

(g) Business enterprises.— In voting shares of stock or in exercising powers of control over similar interests in other forms of business enterprise, the trustee shall act in the best interests of the beneficiaries. If the trust is the sole owner of a corporation or other form of enterprise, the trustee shall elect or appoint directors or other managers who will manage the corporation or business enterprise in the best interests of the beneficiaries.

(h) Permissible transactions.— This section does not preclude the following transactions if fair to the beneficiaries:

- (1) an agreement between a trustee and a beneficiary relating to the appointment or compensation of the trustee;
- (2) payment of reasonable compensation to the trustee and payment of reasonable compensation to affiliates of a corporate trustee if the compensation is disclosed to the current beneficiaries;
- (3) a transaction between a trust and another trust, decedent's estate or guardianship, of which the trustee is a fiduciary or in which a beneficiary has an interest;
- (4) a deposit of trust money in a regulated financial service institution operated by the trustee;
- (5) an advance by the trustee of money for the protection of the trust; or
- (6) a transaction authorized by section 7209.

(i) (Reserved).

§ 7773. Impartiality - UTC 803.

If a trust has two or more beneficiaries, the trustee shall act impartially in investing, managing and distributing the trust property, giving due regard to the beneficiaries' respective interests in light of the purposes of the trust. The duty to act impartially does not mean that the trustee must treat the beneficiaries equally. Rather, the trustee must treat the beneficiaries equitably in light of the purposes of the trust.

§ 7774. Prudent administration - UTC 804.

A trustee shall administer the trust as a prudent person would, by considering the purposes, provisions, distributional requirements and other circumstances of the trust and by exercising reasonable care, skill and caution.

§ 7775. Costs of administration - UTC 805.

In administering a trust, the trustee may incur only costs that are reasonable in relation to the trust property, the purposes of the trust and the skills of the trustee.

§ 7776. Trustee's skills - UTC 806.

A trustee who has special skills or expertise relevant to a trust or who is named trustee in reliance upon the trustee's representation that the trustee has special skills or expertise relevant to a trust shall use those special skills or expertise in the administration of the trust.

§ 7777. Delegation by trustee.

(a) Standards for delegation.— A trustee may delegate duties and powers that a prudent trustee of comparable skills might delegate under the circumstances. The trustee shall exercise reasonable care, skill and caution in:

- (1) selecting an agent;
- (2) establishing the scope and specific terms of the delegation, consistent with the purposes and provisions of the trust; and
- (3) reviewing periodically the agent's actions in order to monitor the agent's performance and compliance with the scope and specific terms of the delegation.

(b) Agent's duty.— The agent shall comply with the scope and terms of the delegation and shall exercise the delegated duties and powers with reasonable care, skill and caution and shall be liable to the trust for failure to do so. An agent who represents having special skills or expertise shall use those special skills or that expertise.

(c) Liability.— A trustee who complies with subsection (a) is not liable to the beneficiaries or to the trust for an action of the agent to whom the function was delegated.

(d) Jurisdiction.— An agent who accepts the delegation of duties or powers from a trustee who is subject to the jurisdiction of a court of this Commonwealth shall be deemed to have submitted to the jurisdiction of that court even if the terms of the delegation provide for a different jurisdiction or venue.

(e) When one trustee may delegate to another.— A trustee may delegate duties and powers to another trustee

if the delegating trustee reasonably believes that the other trustee has greater skills than the delegating trustee with respect to those duties and powers and the other trustee accepts the delegation. The delegating trustee shall not be responsible for the decisions, actions or inactions of the trustee to whom those duties and powers have been delegated if the delegating trustee has exercised reasonable care, skill and caution in establishing the scope and specific terms of the delegation and in reviewing periodically the performance of the trustee to whom the duties and powers have been delegated and that trustee's compliance with the scope and specific terms of the delegation.

§ 7778. Powers to direct - UTC 808.

* * *

(c) Modification or termination of trust.— A trust instrument may confer upon a trustee or other person a power to modify or terminate the trust.

(d) Fiduciary relationship.— A person other than a beneficiary who holds a power to direct certain actions of a trustee is presumptively a fiduciary who, as such, is required to act in good faith with regard to the purposes of the trust and the interests of the beneficiaries. The holder of a power to direct is liable for any loss that results from breach of the holder's fiduciary duty.

§ 7779. Control and protection of trust property - UTC 809.

A trustee shall take reasonable steps to take control of and protect the trust property.

§ 7780. Recordkeeping and identification of trust property - UTC 810.

(a) Records.— A trustee shall keep adequate records of the administration of the trust.

(b) Commingling trust property prohibited.— A trustee shall keep trust property separate from the trustee's own property.

(c) Designating trust property.— Except as otherwise provided in subsection (d) and section 3321 (relating to nominee registration; corporate fiduciary as agent; deposit of securities in a clearing corporation; book-entry securities), a trustee shall cause the trust property to be designated so that the interest of the trust, to the extent feasible, appears in records maintained by a party other than a trustee or beneficiary.

(d) Investing property of separate trusts.— If the trustee maintains records clearly indicating the respective interests, a trustee may invest as a whole the property of two or more separate trusts.

§ 7780.1. Enforcement and defense of claims - UTC 811.

Except as provided in section 7770 (relating to liability of successor trustee), a trustee shall take reasonable steps to

enforce claims of the trust and to defend claims against the trust. When one of several trustees is individually liable to the trust, the other trustee or trustees shall take any legal action against that trustee necessary to protect the trust.

Cross Reference. Section 7780.1 is referred to in section 3384.1 of this title.

§ 7780.2. (Reserved).

§ 7780.3. Duty to inform and report.

(a) Duty to respond to requests.— A trustee shall promptly respond to a beneficiary's reasonable request for information related to the trust's administration.

* * *

(f) Notice to current beneficiaries.— No later than 30 days after the date on which the trustee of an irrevocable trust learns that a person who did not previously receive the notice described in subsection (i) is a current beneficiary of the trust, the trustee shall send the notice described in subsection (i) to the current beneficiary if, at that time, the trustee knows that the settlor is then deceased or has been adjudicated incapacitated.

(g) Change in trusteeship.— Apart from the other requirements of this section, the trustee shall send the notice described in subsection (i) to the current beneficiaries each time there is a change in trusteeship.

(h) Trustee's notice to any beneficiary at any time.— Apart from the requirements of this section, the trustee may send the notice described in subsection (i) to any beneficiary of the trust at any time.

(i) Contents of notice.— Any notice under this section shall be written and convey the following information:

- (1) The fact of the trust's existence.
- (2) The identity of the settlor.
- (3) The trustee's name, address and telephone number.
- (4) The recipient's right to receive a copy of the trust instrument.
- (5) The recipient's right to receive, at least annually, a written report of the trust's assets and their market values if feasible, the trust's liabilities and the trust's receipts and disbursements since the date of the last such report.

(j) Waiver.— Any beneficiary may waive in writing the right to receive the notice described in subsection (i) and thereafter may rescind in writing that waiver.

* * *

(l) Applicability.—

(1) If the death or adjudication of incapacity described in subsection (b), (c), (d) or (e) occurs on or after November 6, 2006, the time limit for notice set forth in that subsection shall apply.

(2) If the death or adjudication of incapacity described in subsection (b), (c), (d) or (e) has occurred before November 6, 2006, the time limit for notice set forth in

that subsection shall be November 6, 2008.

(3) The notice under subsection (f) shall not be required to be completed until two years after November 6, 2006.

Cross References. Section 7780.3 is referred to in sections 3534.1, 7705, 7754, 7755, 7785 of this title.

§ 7780.4. Discretionary powers.

The trustee shall exercise a discretionary power in good faith and in accordance with the provisions and purposes of the trust and the interests of the beneficiaries, notwithstanding the breadth of discretion granted to a trustee in the trust instrument, including the use of such terms as “absolute,” “sole” or “uncontrolled.”

§ 7780.5. Powers of trustees - UTC 815.

(a) Exercise of power.— Except as otherwise provided in the trust instrument or in other provisions of this title, a trustee has all the powers over the trust property that an unmarried competent owner has over individually owned property and may exercise those powers without court approval from the time of creation of the trust until final distribution of the assets of the trust.

(b) (Reserved).

Cross References. Section 7780.5 is referred to in sections 7780.6, 7790.2 of this title.

§ 7780.6. Illustrative powers of trustee.

(a) Listing.— The powers which a trustee may exercise pursuant to section 7780.5 (relating to powers of trustees - UTC 815) include the following powers:

- (1) To accept, hold, invest in and retain investments as provided in Chapter 72 (relating to prudent investor rule).
- (2) To pay or contest a claim; settle a claim by or against the trust by compromise, arbitration or otherwise; and release, in whole or in part, any claim belonging to the trust.
- (3) To resolve a dispute regarding the interpretation of the trust or the administration of the trust by mediation, arbitration or other alternative dispute resolution procedures.
- (4) To prosecute or defend actions, claims or proceedings for the protection of trust assets and of the trustee in the performance of the trustee's duties.
- (5) To abandon or decline to administer any property which is of little or no value, transfer title to abandoned property and decline to accept title to and administer property which has or may have environmental or other liability attached to it.
- (6) To insure the assets of the trust against damage or loss and, at the expense of the trust, protect the trustee, the trustee's agents and the beneficiaries from liability to third persons arising from the administration of the trust.
- (7) To advance money for the protection of the trust and for all expenses, losses and liability sustained in the administration of the trust or because of the holding or ownership of any trust assets. The trustee has a lien on the trust assets as against the beneficiary for an advance under this paragraph, including interest on the advance.

(8) To pay taxes, assessments, compensation of the trustee and employees and agents of the trustee and other expenses incurred in the administration of the trust.

(9) To receive additions to the assets of the trust.

(10) To sell or exchange any real or personal property at public or private sale, without obligation to repudiate an otherwise binding agreement in favor of better offers. If the trustee has been required to give bond, no proceeds of the sale of real estate, including proceeds arising by the reason of involuntary conversion, shall be paid to the trustee until:

(i) the court has made an order excusing the trustee from entering additional security; or

(ii) the court has made an order requiring additional security and the trustee has entered the additional security.

(11) To enter for any purpose into a lease as lessor or lessee with or without option to purchase or renew for a term within or extending beyond the term of the trust.

(12) To grant options for sales or leases of a trust asset and acquire options for the acquisition of assets, including options exercisable after the trust terminates.

(13) To join in any reorganization, consolidation, merger, dissolution, liquidation, voting trust plan or other concerted action of securityholders and to delegate discretionary duties with respect thereto.

(14) To vote a security, in person or by general or limited proxy, with or without power of substitution.

(15) To borrow funds and mortgage or pledge trust assets as security for repayment of the funds borrowed, including repayments after the trust terminates.

(16) To make loans to and buy property from the personal representatives of the settlor and the settlor's spouse. Loans under this paragraph shall be adequately secured, and the purchases under this paragraph shall be for fair market value.

(17) To partition, subdivide, repair, improve or develop real estate; enter into agreements concerning the partition, subdivision, repair, improvement, development, zoning or management of real estate; impose or extinguish restrictions on real estate; dedicate land and easements to public use; adjust boundaries; and do anything else regarding real estate which is commercially reasonable or customary under the circumstances.

(18) With respect to possible liability for violation of environmental law:

(i) to inspect or investigate property the trustee holds or has been asked to hold or property owned or operated by an organization in which the trustee holds or has been asked to hold an interest, for the purpose of determining the application of environmental law with respect to the property;

(ii) to take action to prevent, abate or otherwise remedy any actual or potential violation of environmental law affecting property held directly or indirectly by the trustee, whether taken before or after the assertion of a claim or the initiation of governmental enforcement;

(iii) to decline to accept property into trust or disclaim a power with respect to property that is or may be burdened with liability for violation of environmental law; (iv) to compromise claims against the trust which may be asserted for an alleged violation of environmental law; and

(v) to pay the expense of inspection, review, abatement or remedial action to comply with environmental law.

(19) To operate, repair, maintain, equip and improve any farm or farm operation; to purchase and sell livestock, crops, feed and other property that is normally perishable; and to purchase, use and dispose of farm equipment and employ one or more farm managers and others in connection with farm equipment and pay them reasonable compensation.

(20) To make ordinary or extraordinary repairs or alterations in buildings or other structures; demolish improvements; and raze existing or erect new party walls or buildings.

(21) To enter into a lease or arrangements for exploration and removal of minerals or other natural resources or enter into a pooling or unitization agreement.

(22) To exercise all rights and incidents of ownership of life insurance policies held by the trust, including borrowing on policies, entering into and terminating split-dollar plans, exercising conversion privileges and rights to acquire additional insurance and selecting settlement options.

(23) To employ a custodian; hold property unregistered or in the name of a nominee, including the nominee of any institution employed as custodian, without disclosing the fiduciary relationship and without retaining possession and control of securities or other property so held or registered; and pay reasonable compensation to the custodian.

(24) To apply funds distributable to a beneficiary who is, in the trustee's opinion, disabled by illness or other cause and unable properly to manage the funds directly for the beneficiary's benefit or to pay such funds for expenditure on the beneficiary's behalf to:

(i) the beneficiary;

(ii) a guardian of the beneficiary's estate;

(iii) an agent acting under a general power of attorney for the beneficiary; or

(iv) if there is no agent or guardian, a relative or other person having legal or physical custody or care of the beneficiary.

(25) To pay funds distributable to a minor beneficiary to the minor or to a guardian of the minor's estate or to apply the funds directly for the minor's benefit.

(26) To do any of the following:

(i) Pay any funds distributable to a beneficiary who is not 21 years of age or older to:

(A) the beneficiary;

(B) an existing custodian for the beneficiary under Chapter 53 (relating to Pennsylvania Uniform Transfers to Minors Act) or under any other state's version of the Uniform Transfers to Minors Act;

(C) an existing custodian for the beneficiary under the former Pennsylvania Uniform Gifts to Minors Act or under any other state's version of the Uniform Gifts to Minors Act; or

(D) a custodian for the beneficiary appointed by the trustee under Chapter 53.

(ii) Apply the funds for the beneficiary.

(27) To pay calls, assessments and other sums chargeable

or accruing against or on account of securities.

(28) To sell or exercise stock subscription or conversion rights.

(29) To continue or participate in the operation of any business or other enterprise and to effect incorporation, merger, consolidation, dissolution or other change in the form of the organization of the business or enterprise.

(30) To select a mode of payment under a qualified employee benefit plan or a retirement plan payable to the trustee and exercise rights under the plan.

(31) To distribute in cash or in kind or partly in each and allocate particular assets in proportionate or disproportionate shares.

(32) To appoint a trustee to act in another jurisdiction with respect to trust property located in the other jurisdiction, confer upon the appointed trustee all the powers and duties of the appointing trustee, require that the appointed trustee furnish security and remove the appointed trustee.

(33) To execute and deliver instruments which will accomplish or facilitate the exercise of the trustee's powers.

(b) Effect.— The trustee shall have no further responsibility or liability for funds upon any of the following:

- (1) Payment under subsection (a)(24).
- (2) Payment under subsection (a)(25).
- (3) Payment or application under subsection (a)(26).

Cross Reference. Section 7780.6 is referred to in section 7790.2 of this title.

§ 7780.7. Distribution upon termination.

Upon the occurrence of an event terminating or partially terminating a trust, the trustee shall proceed to distribute the trust property within a reasonable time to the persons entitled to it, subject to the right of the trustee to retain a reasonable reserve for the payment of debts, expenses and taxes.

SUBCHAPTER I—LIABILITY OF TRUSTEES AND RIGHTS OF PERSONS DEALING WITH TRUSTEES

Sec.

7781. Remedies for breach of trust - UTC 1001.

7782. Damages for breach of trust - UTC 1002.

7783. Damages in absence of breach - UTC 1003.

7784. (Reserved).

7785. Limitation of action against trustee.

7786. Reliance on trust instrument - UTC 1006.

7787. Event affecting administration or distribution - UTC 1007.

7788. Exculpation of trustee - UTC 1008.

7789. Beneficiary's consent, release or ratification - UTC 1009.

7790. Limitation on personal liability of trustee - UTC 1010.

7790.1. Interest as general partner - UTC 1011.

7790.2. Protection of person dealing with trustee - UTC 1012.

7790.3. Certification of trust - UTC 1013.

Cross References. Subchapter I is referred to in section 7701 of this title.

§ 7781. Remedies for breach of trust - UTC 1001.

(a) What constitutes breach of trust.— A violation by a trustee of a duty the trustee owes to a beneficiary is a breach of trust.

(b) Remedies.— To remedy a breach of trust that has occurred or may occur, the court may order any appropriate relief, including the following:

- (1) Compelling the trustee to perform the trustee's duties.
- (2) Enjoining the trustee from committing a breach of trust.
- (3) Compelling the trustee to redress a breach of trust by paying money, restoring property or other means.
- (4) Ordering a trustee to file an account.
- (5) Taking any action authorized by Chapter 43 (relating to temporary fiduciaries).
- (6) (Reserved).
- (7) Removing the trustee as provided in section 7766 (relating to removal of trustee - UTC 706).
- (8) Reducing or denying compensation to the trustee.
- (9) Subject to section 7790.2 (relating to protection of person dealing with trustee - UTC 1012):
 - (i) voiding an act of the trustee;
 - (ii) imposing a lien or a constructive trust on trust property; or
 - (iii) tracing trust property wrongfully disposed of and recovering the property or its proceeds.
- (10) (Reserved).

Cross Reference. Section 7781 is referred to in section 7766 of this title.

§ 7782. Damages for breach of trust - UTC 1002.

(a) Liability for breach of trust.— A trustee who commits a breach of trust is liable to the beneficiaries affected.

(b) Contribution.—

- (1) Except as otherwise provided in this subsection, if more than one trustee is liable to the beneficiaries for a breach of trust, a trustee is entitled to contribution from the other trustee or trustees.
- (2) A trustee is not entitled to contribution if the trustee:
 - (i) was substantially more at fault than another trustee; or
 - (ii) committed the breach of trust in bad faith or with reckless indifference to the purposes of the trust or the interests of the beneficiaries.
- (3) A trustee who received a benefit from the breach of trust is not entitled to contribution from another trustee to the extent of the benefit received.

§ 7783. Damages in absence of breach - UTC 1003.

(a) Profit.— A trustee is accountable to an affected beneficiary for any profit, excluding reasonable compensation, made by the trustee arising from the administration of the trust, even absent a breach of trust.

(b) Loss or depreciation.— Absent a breach of trust, a trustee is not liable to a beneficiary for a loss or depreciation in the value of trust property or for not having made a profit.

7784. (Reserved).

§ 7785. Limitation of action against trustee.

(a) Imposed by trustee's written reports.—

(1) A beneficiary may not challenge a transaction or assert a claim against a trustee for breach of trust on the basis of a transaction if:

(i) the trustee provided the beneficiary with a written report of the trust's assets and their market values if feasible, the trust's liabilities and the trust's receipts and disbursements for the year in which the transaction occurred and for each of the four subsequent calendar years;

(ii) the transaction was disclosed in the first of the five reports to which subparagraph (i) refers;

(iii) the beneficiary did not notify the trustee in writing within six months after receiving the fifth annual report that the beneficiary objects to the transaction and provide the basis in writing for that objection; and (iv) all reports were accompanied by a conspicuous written statement describing the effect of this paragraph.

(2) A claim not barred by paragraph (1) may nevertheless be barred by subsection (b).

(b) Five-year absolute bar.— If not previously barred by subsection (a) or section 7798 (relating to failure to present claim at audit):

(1) Except as provided in paragraph (2) or (3), a claim by a beneficiary against a trustee, including a claim preserved by the beneficiary notifying the trustee in the manner described in subsection (a), shall be barred five years after the first to occur of the following events:

(i) the date after the removal, resignation or death of the trustee on which the beneficiary was given the notice required by section 7780.3(g) (relating to duty to inform and report);

(ii) the termination of the beneficiary's interest in the trust; or

(iii) the termination of the trust.

(2) Except as set forth in paragraph (3), if the first to occur of the events set forth in paragraph (1) occurred before November 6, 2006, a claim described in paragraph (1) shall be barred five years after November 6, 2006.

(3) A claim described in paragraph (1) is not barred if, prior to the respective date set forth in either paragraph (1) or (2), the trustee has filed an account with the court or the beneficiary has petitioned the court to compel the trustee to file an account.

Cross References. Section 7785 is referred to in section 7772 of this title.

§ 7786. Reliance on trust instrument - UTC 1006.

A trustee who acts in reasonable reliance on the express provisions of the trust instrument is not liable to a beneficiary for a breach of trust to the extent the breach

resulted from the reliance.

§ 7787. Event affecting administration or distribution - UTC 1007.

If the happening of an event, including marriage, divorce, performance of educational requirements, attaining a specific age or death, affects the administration or distribution of a trust, a trustee who has exercised reasonable care to ascertain the happening of the event is not liable for a loss resulting from the trustee's lack of knowledge.

§ 7788. Exculpation of trustee - UTC 1008.

(a) When exculpatory provision unenforceable.— A provision of a trust instrument relieving a trustee of liability for breach of trust is unenforceable to the extent that it:

(1) relieves the trustee of liability for breach of trust committed in bad faith or with reckless indifference to the purposes of the trust or the interests of the beneficiaries; or

(2) was inserted as the result of an abuse by the trustee of a fiduciary or confidential relationship to the settlor.

(b) Exculpatory provision by trustee.— An exculpatory term drafted or caused to be drafted by the trustee is invalid as an abuse of a fiduciary or confidential relationship unless the trustee proves that the exculpatory term is fair under the circumstances and that its existence and contents were adequately communicated to the settlor.

§ 7789. Beneficiary's consent, release or ratification - UTC 1009.

A trustee is not liable to a beneficiary for breach of trust if the beneficiary consented to the conduct constituting the breach, released the trustee from liability for the breach or ratified the transaction constituting the breach, unless the consent, release or ratification of the beneficiary was induced by improper conduct of the trustee.

Cross References. Section 7789 is referred to in section 7772 of this title.

§ 7790. Limitation on personal liability of trustee - UTC 1010.

(a) When trustee not personally liable.— Except as otherwise provided in the contract, a trustee is not personally liable on a contract properly entered into in the trustee's fiduciary capacity in the course of administering the trust if the trustee in the contract disclosed the fiduciary capacity.

(b) When trustee personally liable.— A trustee is personally liable for torts committed in the course of administering a trust or for obligations arising from ownership or control of trust property, including liability for violation of environmental law, only if the trustee is personally at fault.

(c) Assertion of claim.— A claim based on a contract entered into by a trustee in the trustee's fiduciary capacity on an obligation arising from ownership or control of trust

property or on a tort committed in the course of administering a trust may be asserted in a judicial proceeding against the trustee in the trustee's fiduciary capacity, whether or not the trustee is personally liable for the claim.

Cross Reference. Section 7790 is referred to in section 7705 of this title.

§ 7790.1. Interest as general partner - UTC 1011.

(a) Contractual liability.— Except as otherwise provided in subsection (c) or unless personal liability is imposed in the contract, a trustee who holds an interest as a general partner in a general or limited partnership is not personally liable on a contract entered into by the partnership after the trust's acquisition of the interest if the fiduciary capacity was disclosed in the contract or in a statement previously filed pursuant to 15 Pa.C.S. Ch. 83 (relating to general partnerships) or 85 (relating to limited partnerships).

(b) Tortious liability.— Except as otherwise provided in subsection (c), a trustee who holds an interest as a general partner is not personally liable for torts committed by the partnership or for obligations arising from ownership or control of the interest unless the trustee is personally at fault.

(c) When immunity inapplicable.— The immunity provided by this section does not apply if an interest in the partnership is held by:

- (1) the trustee in a capacity other than that of trustee;
- (2) the trustee's spouse; or
- (3) the trustee's descendant, sibling or parent or the spouse of a descendant, sibling or parent.

(d) Personal liability of settlor.— If the trustee of a revocable trust holds an interest as a general partner, the settlor is personally liable for contracts and other obligations of the partnership as if the settlor were a general partner.

Cross Reference. Section 7790.1 is referred to in section 7705 of this title.

§ 7790.2. Protection of person dealing with trustee - UTC 1012.

(a) (Reserved).

(a.1) Protection from liability.— Unless a person assisting or dealing with a trustee has actual knowledge that the trustee is committing a breach of trust or has knowledge of such facts that the trustee's conduct amounts to bad faith, the person:

- (1) may assume without inquiry the existence of trust powers and their proper exercise by the trustee;
- (2) is not bound to inquire whether the trustee has power to act or is properly exercising the power; and
- (3) is fully protected in dealing with the trustee as if the trustee possessed and properly exercised the powers the trustee purports to exercise.

(b) No requirement to inquire.— A person other than a beneficiary who in good faith deals with a trustee is not required to inquire into the extent of the trustee's powers or the propriety of their exercise.

(c) (Reserved).

(c.1) Ultra vires.— A trustee's act may not be set aside or not specifically enforced because the trustee's act was not authorized by section 7780.5 (relating to powers of trustees - UTC 815) or 7780.6 (relating to illustrative powers of trustee) or because the trustee's act was authorized but the authority was improperly exercised. A court's power to set aside a transaction for fraud, accident, mistake or self-dealing is unaffected by this subsection.

(d) Former trustee.— A person other than a beneficiary who in good faith assists a former trustee, or who in good faith and for value deals with a former trustee, without knowledge that the trusteeship has terminated is protected from liability as if the former trustee were still a trustee.

(e) Effect of other laws.— Comparable protective provisions of other laws relating to commercial transactions or transfer of securities by fiduciaries prevail over the protection provided by this section.

Cross References. Section 7790.2 is referred to in sections 7705, 7772, 7781 of this title.

§ 7790.3. Certification of trust - UTC 1013.

(a) Contents of certification.— Instead of furnishing a copy of the trust instrument to a person other than a beneficiary, the trustee may furnish to the person a certification of trust containing the following information:

- (1) The trust's existence and the date the trust instrument was executed.
- (2) The identity of the settlor.
- (3) The identity and address of the currently acting trustee.
- (4) The powers of the trustee.
- (5) The revocability or irrevocability of the trust and the identity of any person holding a power to revoke the trust.
- (6) The authority of cotrustees to sign or otherwise authenticate and whether all or less than all are required in order to exercise powers of the trustee.
- (7) The trust's taxpayer identification number.
- (8) The manner of taking title to trust property.

(b) Authentication.— A certification of trust may be signed or otherwise authenticated by any trustee.

(c) Assurance of representations.— A certification of trust must state that the trust has not been revoked, modified or amended in a manner that would cause the representations contained in the certification of trust to be incorrect.

(d) Dispositive trust provisions.— A certification of trust need not contain the dispositive provisions of the trust instrument.

(e) Provisions to be made available upon request.— A recipient of a certification of trust may require the trustee to furnish copies of those excerpts from the original trust instrument and later amendments which designate the trustee and confer upon the trustee the power to act in the pending transaction.

(f) Reliance on certification.— A person who acts in reliance upon a certification of trust without knowledge that the representations contained in the certification are incorrect is not liable to any person for so acting and may assume without inquiry the existence of the facts contained in the certification. Knowledge of the provisions of the trust instrument may not be inferred solely from the fact that a copy of all or part of the trust instrument is held by the person relying upon the certification.

(g) Enforcement.— A person who in good faith enters into a transaction in reliance upon a certification of trust may enforce the transaction against the trust property as if the representations contained in the certification were correct.

(h) Liability.— A person making a demand for the trust instrument in addition to a certification of trust or excerpts is liable for damages if the court determines that the person did not act in good faith in demanding the trust instrument.

(i) Applicability.— This section does not limit the right of a person to obtain a copy of the trust instrument in a judicial proceeding concerning the trust.

Cross Reference. Section 7790.3 is referred to in section 7705 of this title.

SUBCHAPTER J —MISCELLANEOUS PROVISIONS

Sec.

7791. Abandonment of property.

7792. Powers, duties and liabilities identical with personal representatives.

7793. Effect of removal, or of probate of later will or codicil.

7794. Title of purchaser.

7795. Reports for school district trustees.

7796. Jurisdiction.

7797. Filing accounts.

7798. Failure to present claim at audit.

7799. Income on distributive shares.

7799.1. Annexation of account of distributed estate or trust.

7799.2. Accounts, audits and distributions.

7799.3. Pooled trusts for persons with disabilities.

§ 7791. Abandonment of property.

If any property is so burdensome or is so encumbered or is in such condition that it is of no value to the trust, the trustee may abandon it. If property without value cannot be abandoned without transfer of title to another or without a formal renunciation, the court may authorize the trustee to transfer or renounce it without consideration if

it finds that this will be for the best interests of the trust.

* * *

§ 7797. Filing accounts.

(a) When to file.— A trustee shall file an account of his administration whenever directed to do so by the court and may file an account at any other time.

(b) Where to file.— All accounts of trustees shall be filed in the office of the clerk.

§ 7798. Failure to present claim at audit.

(a) Applicability.— This section applies to a person that, at the audit of a trustee's account, has a claim that:

(1) arose out of the administration of trust property or arises out of the distribution of trust property upon any interim or final accounting of the trust; and

(2) is not reported to the court as an admitted claim.

(b) Bar.— A person that fails, at the call for audit or confirmation, to present a claim under subsection (a) shall be forever barred from making a claim against:

(1) trust property distributed pursuant to the audit or confirmation;

(2) a distributee of trust property distributed pursuant to the audit or confirmation; and

(3) except as otherwise provided in section 3521 (relating to rehearing; relief granted), trust property awarded back upon further trust pursuant to the audit or confirmation.

(c) Liens and charges unimpaired.— Nothing in this section shall be construed as impairing any lien or charge on real or personal estate of the trust existing at the time of the audit.

Cross References. Section 7798 is referred to in section 7785 of this title.

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