

STRENGTHENING YOUR LEGAL GUARDRAILS 2023

WHAT FAITH-BASED & NONPROFIT ORGANIZATIONS NEED TO KNOW

Presented by:

KARL MILL, ESQ.
Founding Attorney
Mill Law Center

PATRICK HOGAN
Attorney
Mill Law Center



Before we start, please make sure to change your Zoom name to your first & last name + your organization name

Ex. "Shy Alderman - OCCUR"

HOW TO CHANGE YOUR ZOOM NAME



- 1) Hover over your video
- 2) Click the 3 dots in the upper right corner
- 3) Click Rename
- 4) Change your full name + organization

A recording of this workshop & the presentation slides will be emailed out to all attendees in few days. They will also be made available on *amodelbiltonfaith.org*

If you did not pre-register for this event & are just showing up, please make sure to drop your email in the chat so we know where to send materials

OCCUR & THE SAN FRANCISCO FOUNDATION

AMBOF PROGRAM TEAM



Dr. David Franklin
President & CEO, OCCUR



Carmen Bogan, MBA
Lead Consultant, FAITHS



Michelle L. Myles Chambers
Director, FAITHS



Sayron Stokes
Program Assistant, FAITHS



Shy Alderman
Operations Manager, OCCUR



Symone Stokes
Admin Assistant, OCCUR



KARL MILL, ESQ.

Founding Attorney
Mill Law Center



PATRICK HOGAN

Attorney
Mill Law Center

Key Principles of Nonprofit Law

UNDERSTANDING ANNUAL REPORTING, BOARD LEGAL
RESPONSIBILITIES, KEY HUMAN RESOURCES TOPICS, AND OTHER
LEGAL GUARDRAILS

Karl Mill and Patrick Hogan, Mill Law Center,
karl@mill.law, patrick@mill.law

Goal: Short-Term and Long-Term Planning for Your Non-Profit

Short Term

- Formation Requirements
- Compliance Requirements
- A few words about Fiscal Sponsorship

Long Term

- Requirements for Public Charities
- Lobbying + Political Advocacy (Do's and Don'ts)
- Employees/Contractors/Volunteers
- Talking Money: Revenue Generation

Short Term Tasks

What Should Have Happened and What to Double-Check

Articles of Incorporation (filed with Secretary of State)

Did you form as a public benefit corporation or a religious corporation?
What do your purposes say? Have you created narrow restrictions?

Bylaws

How are your directors elected? What officer positions do you have?
Meetings, members, signing authority, fiscal year, etc.

Initial Corporate Actions

- first meeting minutes or consent or action of sole incorporator)
- appointing directors and officers

Conflict of Interest Policy

Operating an Organization: Keeping Up with the Law and Best Practices:

Fiduciary Duties --- Duty of Care, Duty of Loyalty

Board Meetings -- frequency, subject matters, minutes

Corporate Records – determination letter, filings, contracts, government correspondence

Financial Statements and Controls– broad access, regular review and reconciliation, dual signatory requirements

Director and Officer Insurance

An Overview of California Charities and Regulators



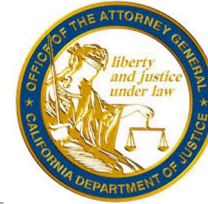
**Internal Revenue
Service**



**California
Franchise Tax Board**



**California
Secretary of State**



**California
Attorney General**

**Grantmaking Public
Charities
(Out of General Funds)**

**Grantmaking Public Charities
(Out of Donor-Advised Funds)**

Private Foundations

Churches

**Other
Faith-Based
Organizations**

**Operating
Public Charities**



LEAST REGULATED

MOST REGULATED

Filings/Applications – What Do You Owe to Whom and When?



Internal Revenue Service

California Franchise Tax Board

California Secretary of State

California Attorney General

CHURCHES

1. No Tax-Exemption Application (but you might want one)
2. No Annual Information Return (Form 990), BUT if you ever generate UBIT, you need to file and pay tax (Form 990-T)

NON-CHURCHES

1. Must file tax-exempt application (typically within first 27 months)
2. Must file Form 990 each year (and pass a public support test to remain a public charity)
3. Must file Form 990-T and pay tax if you generate UBIT

Churches

Other Faith-Based Organizations
(incorporated as CA nonprofit religious corporations)

Other Faith-Based Organizations
(incorporated as CA nonprofit public benefit corporations)

Filings/Applications – What Do You Owe to Whom and When?



Internal Revenue Service

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CHURCHES

1. NEED to establish California state tax exemption (no automatic exemption for churches) – Form 3500
2. Do NOT need to file annual returns (Form 199) once exemption has been established
3. DO need to file Form 109 and pay tax if you generate UBIT

NON-CHURCHES

1. Must file tax-exempt application (typically a Form 3500A, 1 page form attaching your federal determination letter)
2. Must file Form 199 (or 199N if you qualify) each year
3. Must file Form 109 and pay tax if you generate UBIT

Churches

Other Faith-Based Organizations
(incorporated as CA nonprofit religious corporations)

Other Faith-Based Organizations
(incorporated as CA nonprofit public benefit corporations)

Filings/Applications – What Do You Owe to Whom and When?



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EVERYONE

1. Must file Articles of Incorporation to establish existence
2. Must file Initial Statement of Information within 90 days of formation
3. Must file further Biennial Statements of Information every other year (listing officers and address)

Churches

Other Faith-Based Organizations
(incorporated as CA nonprofit religious corporations)

Other Faith-Based Organizations
(incorporated as CA nonprofit public benefit corporations)

Filings/Applications – What Do You Owe to Whom and When?



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California Attorney General

RELIGIOUS CORPORATIONS (CHURCHES AND NON-CHURCHES)

1. Do NOT need to register with the Attorney General
2. Do NOT need to file annual RRF-1 or any other forms
3. Limited AG involvement in religious corporations, with certain exceptions (mergers/dissolutions, fraud, charitable solicitation rules)

Public Benefit Corporations

1. Must register (CT-1) within 30 days of receiving funding
2. Must file Form RRF-1 every year (including financial information)
3. Attorney General has VERY broad authority to investigate and enforce law against your organization and directors

Churches

Other Faith-Based Organizations
(incorporated as CA nonprofit religious corporations)

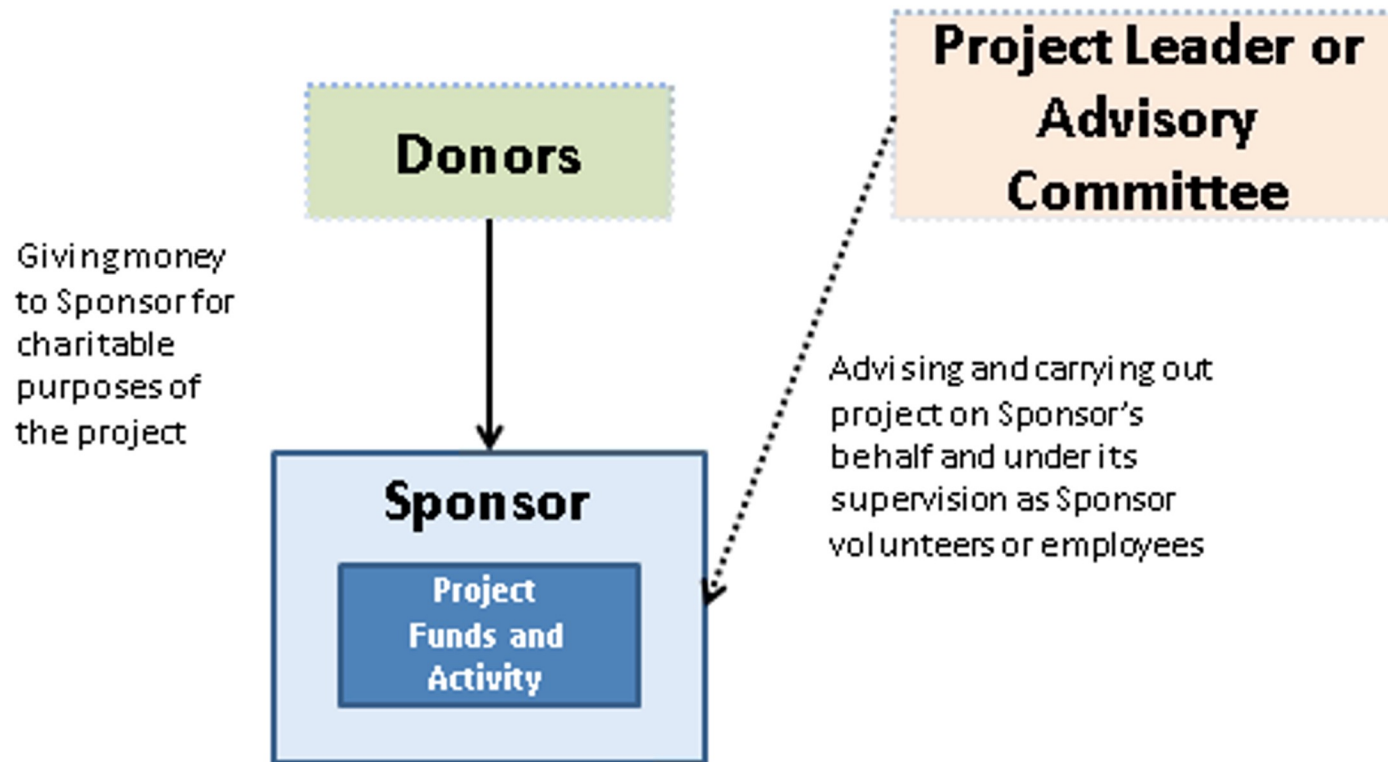
Other Faith-Based Organizations
(incorporated as CA nonprofit public benefit corporations)

Quick Note About Fiscal Sponsorship:

- **What is it?** An existing charity sponsoring your project instead of you forming your own organization (Model A) or re-granting to you (Model C)
- **What are the pros?** Access to charitable donations without having to establish own non-profit or while application is pending -- sponsor handles compliance
- **What are the cons?** Lack of legal control/guarantee about access to donor funds -- relying on trust. Fiscal sponsorship fee.

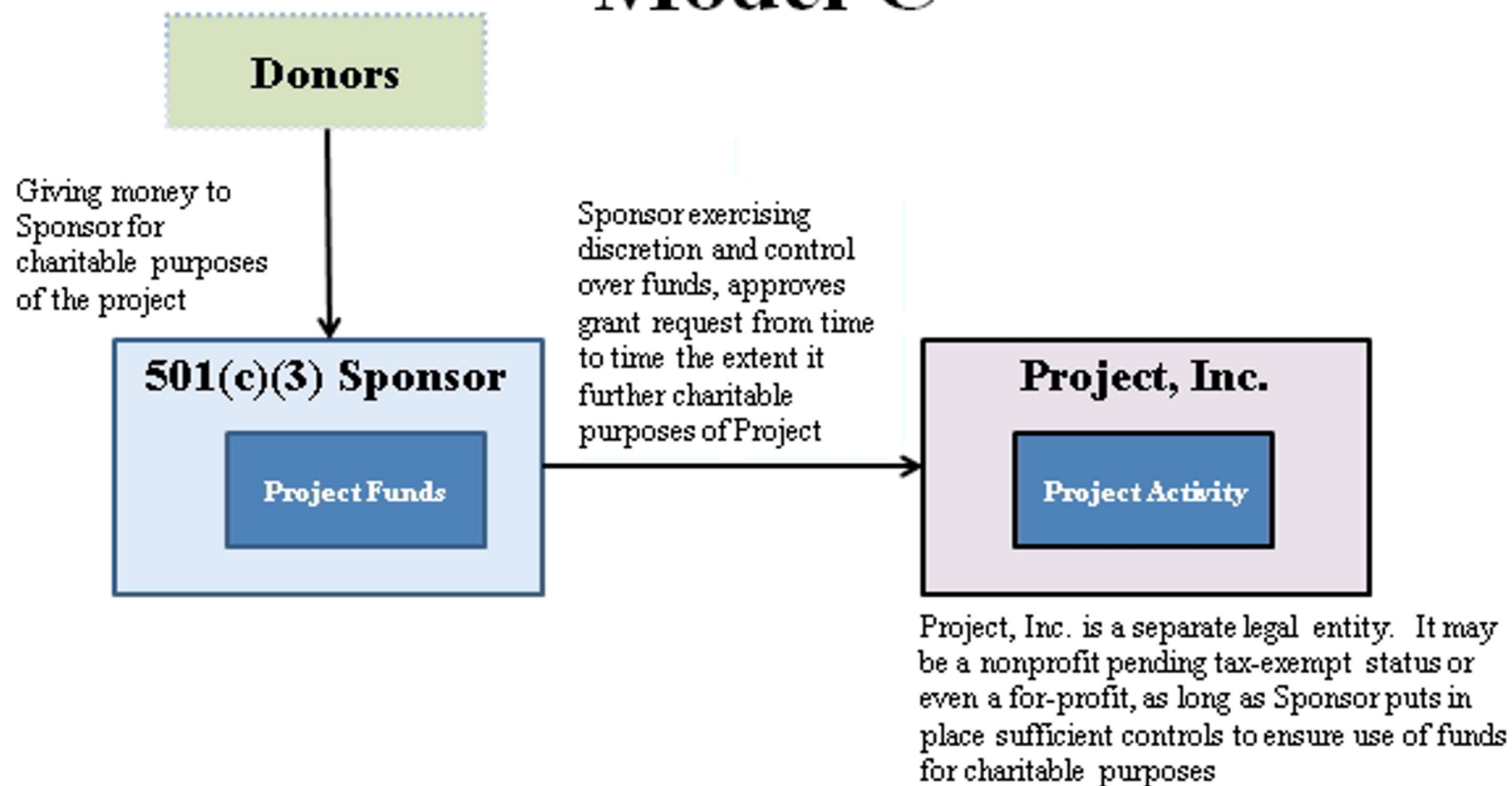
Fiscal Sponsorship: Model A

Model A Fiscal Sponsorship



Fiscal Sponsorship:

Model C





BREAK

(5 minutes)

You may turn off your audio/video
but please do not leave the zoom room

See you soon!

Long-Term Planning

Let's Talk About 501c3 Compliance

Requirements for 501(c)(3) Public Charities



FMV transactions only
No excessive private benefit
No inurement

Public Charity

Operational Flexibility

- Needs to operate exclusively for charitable, educational, religious, or scientific purposes (no other *significant* purpose)
- No set distribution requirement – just needs operations ‘commensurate in scope’ to assets.
- Needs to invest prudently and act charitably, but no private foundation rules
- Can do some lobbying but needs to be insubstantial.
- No partisan candidate activity.

Requirements to Qualify

- In addition to 501(c)(3) org. and operating test, need to either:
- Pass a public support test;
 - Be a supporting org. (controlled by a publicly supported org); or
 - Be a special organization (e.g., church, hospital, school).

Tax Rules

- Most favorable contribution deduction rules for gifts for income tax
- Contributions deductible for estate and gift tax.
- Does not pay tax on income that is sufficiently **related** to charitable purposes (e.g. tuition, admission, etc.)
- Generally, does not pay tax on passive income, except:
 - Debt-financed income
 - S-corporation income
 - Certain income from controlled subsidiary

Let's Talk Politics

Political Activities

Advocacy

Generally OK if it advances charitable purposes

Electioneering

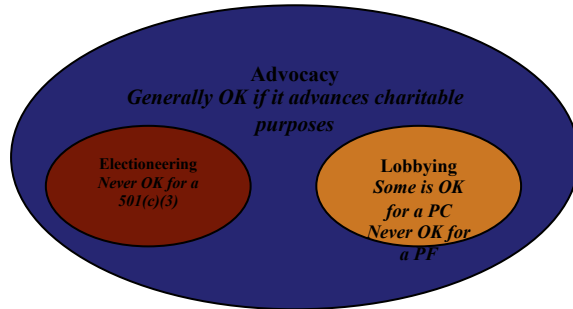
*Never OK for a
501(c)(3)*

Lobbying

*Some is OK for a
PC*

Political Activities

Rules for 501(c)(3)'s



Issues That Matter for Many 501(c)(3)'s

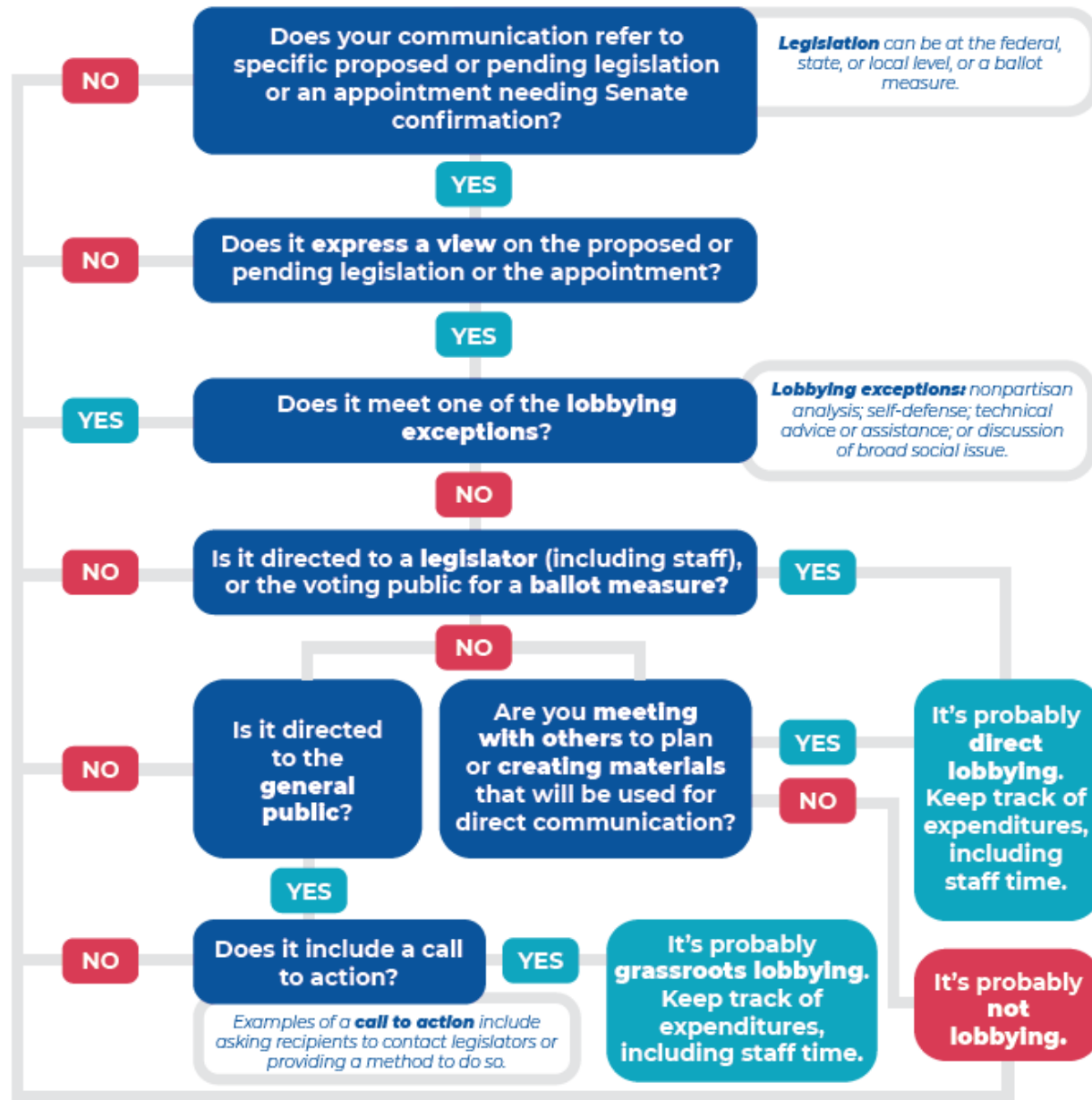
Environmental Preservation

Public Health

Criminal Justice Reform

Rules for For-Profits





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BREAK FOR QUESTIONS

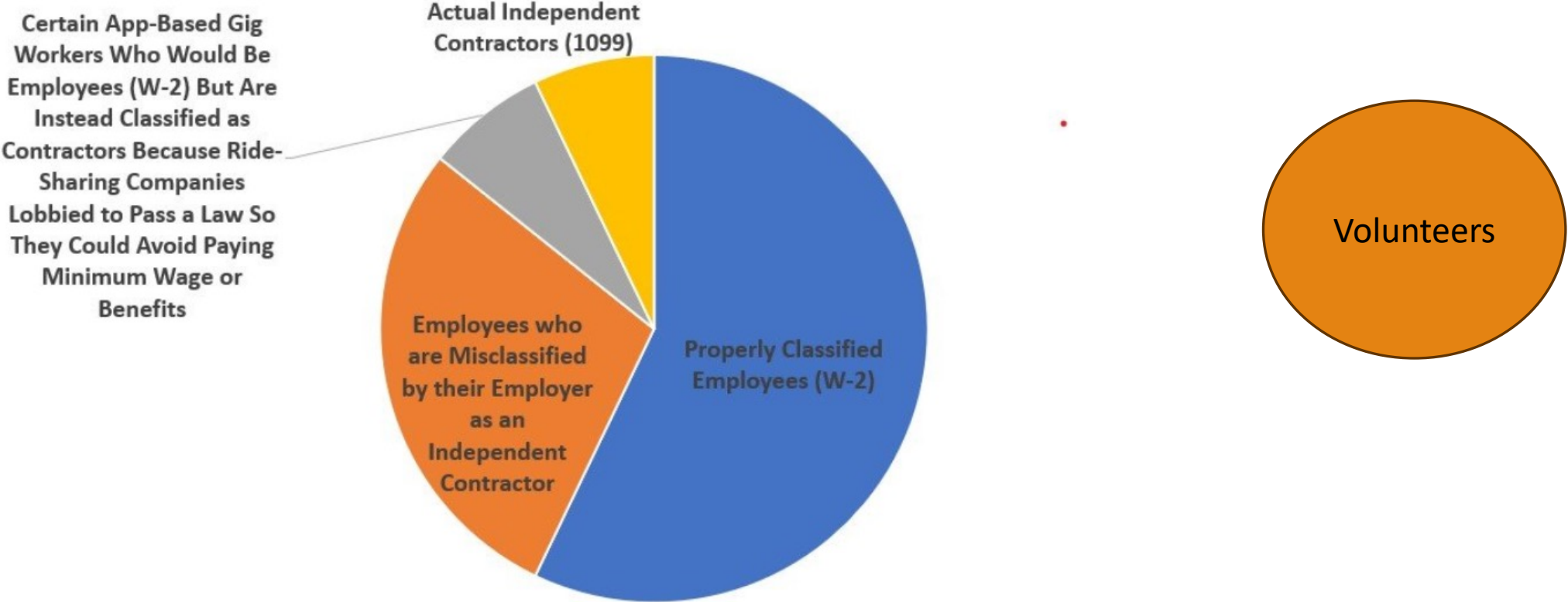
Let's Talk People

EMPLOYEES v. CONTRACTORS

VOLUNTEERS

Employee Classification

A Very Rough Guess at the Breakdown of California Workers by Classification
(Margin of Error = Very High)



EVERY WORKER IS PRESUMED TO BE AN EMPLOYEE

UNLESS the worker meets the factors of the ABC TEST:

- (A) The person is free from the control and direction of the hiring entity in connection with the performance of the work, both under the contract for the performance of the work and in fact.
- (B) The person performs work that is outside the usual course of the hiring entity's business.
- (C) The person is customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the work performed.

"VOLUNTEER" is defined as an individual who performs work for civic, charitable, or humanitarian reasons, for a public agency or tax-exempt corporation (see IRC §501(c)(3)), "without promise, expectation, or receipt of any compensation for work performed." Lab C §1720.4(a)(1)).

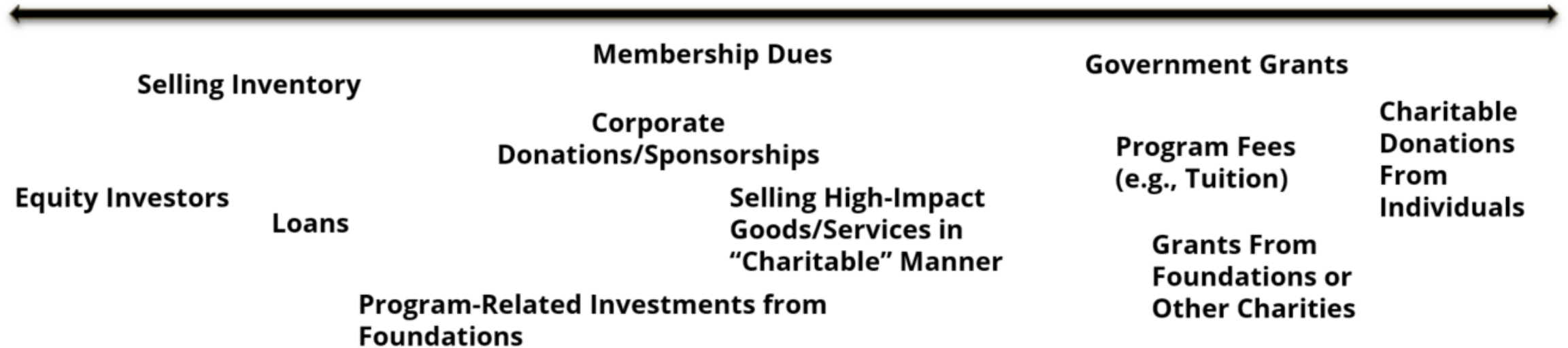
- Are the volunteer activities in question the same or similar to the activities the employee is employed to perform, and are they during or outside the employee's normal working hours?
 - There must be no contemplation of pay.
-

Let's Talk Money

Where Is the Money Coming From?

Income/Funding That
Works Better in a
For-Profit

Income/Funding That
Works Better in a
Non-Profit



Revenue-Generating Activities: Business Activity

Related Business Activities

Unrelated Business Activities

Definition: A trade or business, Regularly carried on, and Not substantially related to furthering the exempt purposes of the organization.

Unrelated Business Income Tax

Insubstantial v. Substantial Activity

Exclusions and Modifications

	UNRELATED INCOME GENERATING ACTIVITY	RELATED INCOME GENERATING ACTIVITY
PASSIVELY-GENERATED INCOME (rent, royalties, interest, gain, dividends)	USUALLY NOT TAXABLE , unless exception applies, such as: <ul style="list-style-type: none"> • Debt-financed income • S-corporation income • Payments from controlled subsidiary 	NOT TAXABLE
ACTIVELY-GENERATED INCOME (active trade or business – sale of inventory, fees for services, etc.; includes pass-through income from partnership actively conducting business)	USUALLY TAXABLE , some exceptions, including: <ul style="list-style-type: none"> • Activities not regularly carried on • Volunteer Exception 	NOT TAXABLE

Unrelated Business Income

Revenue-Generating Activities: Fundraising

Charitable Trust Doctrine

Charitable Solicitation Registration Laws

Commercial Co-Venture

Raffles

Questions?

Karl F. Mill

Mill Law Center

SF: 201 Mission Street, Suite 1200, San Francisco, CA 94105

LA: 445 S. Figueroa Street, Suite 3100, Los Angeles, CA 90071

www.mill.law

karl@mill.law

Please join OCCUR & San Francisco Foundation in September
for the AMBOF Year-End Celebration!

THE POWER OF FAITHS & COMMUNITY

TAKING OUR IMPACT HIGHER

With Special Guest Panelists:

Paul & Cheryl Bains - Pastors, *St. Stevens Church* and Founders, *United Hope Builders*

Dr. Jonathan Butler - Pastor, *Third Baptist Church* and Social Epidemiologist & Researcher, *UCSF School of Medicine*

Devone Boggan - Founder, *Advance Peace*

Moderated By:

Dr. Michelle Miles Chambers - Senior Program Officer FAITHS, *SF Foundation*

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AModelBuiltOnFaith.org

SAVE THE DATE
SEPTEMBER 27



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