The following describe two fictional 501(c)(4) advocacy organizations and the compliance implications of H.R. 1. Neither of these are real organizations, and all situations, while hypothetical, represent the types of advocacy campaigns that 501(c)(4)s engage in to support the needs of their communities and constituencies. These scenarios would also apply to other organizations — unions, LLCs, and other non-501(c)(3) organizations—covered by the H.R. 1 provisions discussed below. While H.R. 1 is framed as a bill that would expand campaign finance disclosure, it impacts the lobbying and advocacy activities of 501(c)(4)s and other affected organizations by treating all member of Congress as candidates and certain lobbying and advocacy communications as campaign related. Other types of entities, including for-profit corporations or 501(c)(3)s, are not subject to these hypotheticals or the expanded reporting obligations.

Organization 1

All Voices Matter Action, a fictional 501(c)(4) was formed by Kentucky activists to advocate for policies on the state and federal level that would help people rise out of poverty. The majority of their advocacy is state and local, but legislation that would be enormously beneficial to the communities the group works with is moving in Congress. With the votes of Kentucky’s senators it may pass and be signed into law. With the votes of Kentucky’s senators it may pass and be signed into law.

All Voices Matter Action has a budget of $250,000 and receives many contributions from Kentuckians in amounts less than $100, raising $15,000 annually from those grassroots donors. The organization also raises $10,000 from its annual event, receives a restricted grant for community education from a community foundation in the amount of $25,000 and another $30,000 from a (c)(4) funder. The majority of its funds come from Kentucky-based attorneys and wealthy business owners whose clients include a wide range of Kentuckians from all sides of the political spectrum. The group has 45 donors who give $1000 or more, with only five of them giving $10,000 or more. Many of the donors are concerned that their support for All Voices Matter could impact their business relationships or subject them to criticism in their conservative communities because of the organization’s stance on some politically divisive issues.

How would H.R. 1 affect All Voices Matter as it engages in the following advocacy campaign?

SCENARIO 1

The House has passed legislation that will provide grants to cover the cost of tuition for students attending community colleges. These grants would make it possible for thousands of Kentucky youth to gain the skills and education they need to advance in their careers. The bill has been introduced in the Senate and Senator Rand Paul has announced he does not support the bill. All Voices Matter thinks he can be persuaded if enough constituents reach out and convey their support, so the organization dedicates $15,000
to an advertising campaign to run the following ad in Kentucky newspapers, in paid social media ads, and to place it on billboards along heavily traveled Kentucky roads. The language of the billboards and ads in the newspaper and on paid social media says:

Rand Paul is hurting Kentucky students with his opposition to the Every Student Act. Tell him to vote yes.

**COMPLIANCE**

All Voices Matter has made campaign-related disbursements (CRD) because the organization has spent more than $10,000 on qualifying communications that criticize a member of Congress. The communications were public communications because they were in newspapers, social media, billboards, and phone banks. Telling Kentuckians that Paul’s position hurt students is likely to be considered criticizing a candidate because he has a campaign account that is fundraising for his re-election. This is lobbying, but H.R. 1 treats All Voices Matter’s advocacy as campaign speech because it is structured as a 501(c)(4). If a 501(c)(3) engaged in the same advocacy, it would not be considered a campaign-related disbursement. Although the advocacy campaign was in no way related to the Senator’s election or defeat, and was entirely about pending legislation, intent to influence an election is not a factor in the analysis. All Voices Matter will need to do the following to comply with the requirements in H.R. 1.

File reports with the FEC that:

- Provide the address of the organization, names, and addresses of its board members.
- Include the names and addresses of donors who gave more than $10,000. The grant from the community foundation would not need to be disclosed if it had been placed into a segregated account because it was restricted from lobbying. If it was not in a restricted account, the name of the private foundation would need to be disclosed as part of the CRD (campaign related disclosure) requirements.
- Even though the ads were grassroots lobbying communications, the organization will need to disclose the election to which the CRD pertains, the name of any candidate mentioned, and whether the communication supported or opposed that candidate.
- Include a certification from the CEO that the communication was not made in coordination with a candidate or political party. It is not clear whether the organization could discuss its advocacy plans and messaging with any member of Congress to support the bill, despite these communications being focused on legislative matters. It could also be considered improper coordination if the organization hosted a press briefing or rally on a legislative or policy issue with member of Congress, activities that 501(c)(4)s commonly do as part of its lobbying and issue advocacy.
- The social media ads will need to disclose the names and addresses of the organization’s top five donors (even if the donors don’t know about this particular campaign).
- The ads will also need to include a disclaimer stating the name of the organization’s CEO or highest-ranking official as the person who approved the message. Ads in video format will need to make this disclaimer verbally and in writing and include a full-screen image of the person who approved the message.
SCENARIO 2

It is 2021 and All Voices Matter decided it would work with a national coalition that formed as a 501(c)(4) to pass the bill. It gave a $7,500 grant to the coalition to pay for a viral social media campaign in which students will discuss the harm Mitch McConnell is doing by threatening to filibuster the bill.

In 2022 the bill has still not passed, but 30 days before the midterm elections the bill is scheduled to go to the floor. Rand Paul says he is undecided. All Voices Matter decides to do a grassroots lobbying campaign to tell Rand Paul to vote yes on the bill. It spends $5,000 on a paid social media campaign that includes videos of Kentucky students encouraging Kentuckians to contact Rand Paul. The message is simple:

Tell Senator Paul to vote yes: Our future depends on it.

COMPLIANCE

The contribution to the national coalition is a covered transfer and counts toward the aggregate calculation of whether All Voices Matter has spent $10,000 or more in CRDs. The second expenditure of $5000 makes it a covered organization that is subject to CRD reporting requirements. This is because the contribution to the coalition was earmarked for communications that also met the definition of a CRD. Although the second grassroots campaign that encouraged Senator Paul to vote yes did not criticize or praise him and was made in response to a pending legislative issue, it meets the definition of an electioneering communication because of the timing. By aggregating the contribution to the coalition and the vote yes campaign, All Voices Matter has become a covered organization for the purposes of CRD reporting and the disclosure of its top donors pursuant to the Stand By Every Ad requirements. In addition to the information that is discussed in Scenario 1, the organization will also need to report the name and address of the coalition that received the $7,500 grant in 2021 and file an electioneering communication report with the FEC in addition to the CRD report.

Organization 2

Voting Rights Action is a new 501(c)(4) that was formed by community organizers (who make up the board of directors) to advocate for uniform voting laws that will block states from the type of voter suppression tactics the founders had seen in their communities during the 2020 election. The group had researched the advantages and disadvantages of forming under a 501(c)(3) or a 501(c)(4) structure, and quickly realized that their plans for change involved more lobbying, especially grassroots lobbying, than could be done under a 501(c)(3) structure. They also realized their goals for change may never be successful if elected representatives were hostile to their issues, so a 501(c)(4) structure also offered the advantage of being able to endorse candidates who supported their voter protection agenda. For their community organizer staff members, it meant they could finally achieve stable, year-round employment in an organization that combined the power of issue advocacy, community education and organization, with partisan work to support the election of representative who would put the interests of the ordinary people in their communities above the interests of powerful corporations and wealthy individuals.

Because it is a start-up, the organization has only two full-time employees, and one part-time employee. The group contracts out its accounting and payroll. Funding comes from
contributions from wealthy donors who live in states where voters experienced voter purges and restrictive voting laws. The group also receives a grant from a union partner and a 501(c)(4) fund for its work to engage young people who live in majority-minority districts that have experienced voter suppression.

In order to pass new voting rights legislation, VRA will engage in direct lobbying in Congress, but will also work with its board to engage in outreach work with their communities, relying primarily on paid social media videos that feature local musicians, a series of community concerts and on-line events to engage young voters. The group wants to include supportive representatives and local artists in their music videos to help generate interest and encourage young people to get involved in the creation of public policies that support their communities. VRA also wants to ensure that supporters in their target communities know how their representatives vote and plan to use paid phone banks and texting programs to connect supporters with their representatives before and after key actions are taken on target legislation. VRA has a budget of $35,000 to conduct all of these activities.

VRA knows that an informed electorate is an empowered electorate. The group is also looking into using newer forms of organizing and plans on hosting events with well-known gamers on Twitch. VRA had seen the receptive response Alexandria Ocasio-Cortez received when she participated in a Twitch gaming session and wants to promote similar events with representatives who are leading the effort to pass voting rights legislation in Congress. VRA’s goal is to educate and engage college-aged voters in a discussion about the pending voting rights legislation. A donor who wants to remain anonymous has given a $5000 contribution to support the staff time and promotion costs for the Twitch events. VRA has agreed to this restriction on the contribution and has placed the funds in an account segregated from the general account that is used to pay for other organizational expenses.

COMPLIANCE

If VRA were a for-profit corporation, or had incorporated as a 501(c)(3), all of the lobbying and advocacy described above would have been exempt from H.R. 1’s disclosure and reporting requirements. However, because it is a 501(c)(4) social welfare organization many of its advocacy costs meet the definition of campaign-related disbursements.

- VRA’s paid social media ads will need to comply with all of the requirements listed in the Organization 1, Scenario 1 example.

- Additionally, VRA may not be able to engage in the Twitch gaming event with federal bill sponsors because the organization’s activities to support the voting rights legislation meet the definition of campaign-related disbursements. When reporting these CRD expenditures, VRA’s CEO will need to certify they were not made in “cooperation, consultation, or concert with or at the request or suggestion of a candidate,” which seems to be the same standard that prohibits coordination with candidates when an entity makes an independent expenditure that supports or opposes a candidate’s election. The Twitch events would seemingly have met the definition of coordination with a federal candidate (like all members of Congress the bill sponsors have campaign finance accounts and are planning to run for re-election) because they involved discussions of VRA’s plans to support the voting rights legislation. VRA will either need to return the donor’s contribution as it was earmarked for the twitch events or agree upon another use.
Conclusion

These disclosure requirements, by themselves, may not be overly burdensome or complicated. But when groups engage in thousands of communications each year, they will have to go through this analysis for each communication—and then do the requisite reporting.

Moreover, in our increasingly polarized society, someone who may want to support the work of a 501(c)(4) may think differently if they know their names would be made public. Donors may begin to restrict contributions from being used for campaign-related disbursements, making it difficult, if not impossible, for 501(c)(4)s and other affected organizations to fund their lobbying efforts. Donors may also insist on approving any message to which their name is attached, which would make the opinions of wealthy donors even more dominant. Disclosing wealthy donors in an advocacy communication will direct focus away from the message and to the speaker, diluting the voices of the many other grassroots donors to an advocacy organization. Many organizations are supported by a large number grassroots donors, but their support for an advocacy goal will be redirected to an organization’s few wealthy donors who are likely to insist on greater control of advocacy if their name is attached to messaging. For-profit corporations are not subject to H.R. 1, and as a consequence big money interests will continue to dominate the policy debate.