



Americans United for Separation of Church and State

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14 EXAMPLES OF PERMITTED AND NON-PERMITTED 501(c)(3) ACTIVITIES

The following 14 examples are adapted from IRS Revenue Ruling 2007-41, issued June 18, 2007. These are designed to explicate “fact” situations for organizations organized and operated for religious, charitable, scientific, testing for public safety, literary or educational purposes, or for the prevention of cruelty to children or animals under 26 CFR 1.501(c)(3)-1.

The fact situations cover the areas of, 1) Voter Education, Voter Registration and Get Out the Vote Drives, 2) Individual Activity by Organization Leaders, 3) Candidate Appearances, 4) Candidate Appearances Where Speaking or Participating as a Non-Candidate, 5) Issue Advocacy vs. Political Campaign Intervention, 6) Business Activity, and 7) Web Sites. Two examples are presented for each type of activity, one permitted and one not permitted. The rationales and rulings in accordance with Rev Rul 2007-41 appear at the end of this document.

FACT SITUATIONS

1. Voter Education, Voter Registration and Get Out the Vote Drives

- a. Climate Club is a section 501(c)(3) organization that educates the public on environmental issues. Candidate Goodlady is running for the state legislature and an important element of her platform is challenging the environmental policies of the incumbent. Shortly before the election, CC sets up a telephone bank to call registered voters in the district in which Candidate Goodlady is seeking election.

In the phone conversations, CC’s representative tells the voter about the importance of environmental issues and asks questions about the voter’s views on these issues. If the voter appears to agree with the incumbent’s position, CC’s representative thanks the voter and ends the call. If the voter appears to agree with Candidate Goodlady’s position, CC’s representative reminds the voter about the upcoming election, stresses the importance of voting in the election and offers to provide transportation to the polls.

Permitted or Not Permitted?

- b. Save Our City, a section 501(c)(3) organization that promotes community involvement, sets up a booth at the state fair where citizens can register to vote. The signs and banners in and around the booth give only the name of the organization, the date of the next upcoming statewide election, and notice of the opportunity to register. No reference to any candidate or political party is made by the volunteers staffing the booth or in the materials available at the booth, other than the official voter registration forms which allow registrants to select a party affiliation.

Permitted or Not Permitted?

2. Individual Activity by Organization Leaders

- a. President Black is the president of University Kool, a Section 501(c)(3) organization. University K publishes a monthly alumni newsletter that is distributed to all alumni of the university. In each issue, President Black has a column titled “My Views.” The month before the election, President Black states in the “My Views” column, “It is my personal opinion that Candidate Goodguy should be reelected.” For that one issue, President Black pays from his personal funds the portion of the cost of the newsletter attributable to the “My Views” column.

Permitted or Not Permitted?

- b. Minister Chuck is the minister of Church Righteous, a section 501(c)(3) organization and Minister Chuck is well known in the community. Three weeks before the election, he attends a press conference at Candidate Victor's campaign headquarters and states that Candidate Victor should be reelected. Minister Chuck does not say he is speaking on behalf of Church Righteous. His endorsement is reported on the front page of the local newspaper and he is identified in the article as the minister of Church Righteous.

Permitted or Not Permitted?

3. Candidate Appearances

- a. President Ed is the president of Society Now, a historical society that is a section 501(c)(3) organization. In the month prior to the election, President Ed invites the three Congressional candidates for the district in which Society Now is located to address the members, one each at a regular meeting held on three successive weeks. Each candidate is given an equal opportunity to address and field questions on a wide variety of topics from the members. Society Now's publicity announcing the dates for each of the candidate's speeches and President Ed's introduction of each candidate include no comments on their qualifications or any indication of a preference for any candidate.

Permitted or Not Permitted?

- b. Minister Fran is the minister of Church O Yeah?, a section 501(c)(3) organization. The Sunday before the November election, Minister Fran invites Senate Candidate Xavier to preach to her congregation during worship services. During his remarks, Candidate Xavier states, "I am asking not only for your votes, but for your enthusiasm and dedication, for your willingness to go the extra mile to get a very large turnout on Tuesday." Minister Fran invites no other candidate to address her congregation during the Senatorial campaign. Because these activities take place during official church services, they are attributed to Church O Yeah.

Permitted or Not Permitted?

4. Candidate Appearances Where Speaking or Participating as a Non-Candidate

- a. Historical society Past is a section 501(c)(3) organization. Society Past is located in the state capital. President George is the president of Society Past and customarily acknowledges the presence of any public officials present during meetings. During the state gubernatorial race, Lieutenant Governor Yes, a candidate, attends a meeting of the historical society. President George acknowledges the Lieutenant Governor's presence in his customary manner, saying, "We are happy to have joining us this evening Lieutenant Governor Yes." President George makes no reference in his welcome to the Lieutenant Governor's candidacy or the election.

Permitted or Not Permitted?

- b. Mayor George attends a concert performed by Symphony Short, a section 501(c)(3) organization, in City Park. The concert is free and open to the public. Mayor George is a candidate for reelection, and the concert takes place after the primary and before the general election. During the concert, the chairman of Short's board addresses the crowd and says, "I am pleased to see Mayor George here tonight. Without his support, these free concerts in City Park would not be possible. We will need his help if we want these concerts to continue next year so please support Mayor George in November as he has supported us."

Permitted or Not Permitted?

5. Issue Advocacy vs. Political Campaign Intervention

- a. Organization Remedial, a section 501(c)(3) organization that educates the public about the need for improved public education, prepares and finances a radio advertisement urging an increase in state funding for public education in State Xero, which requires a legislative appropriation. Governor Ed is the governor of State Xero. The radio advertisement is first broadcast on several radio stations in State Xero beginning shortly before an election in which Governor Ed is a candidate for re-election.

The advertisement is not part of an ongoing series of substantially similar advocacy communications by Organization Remedial on the same issue. The advertisement cites numerous statistics indicating that public education in State Xero is under funded. While the advertisement does not say anything about Governor Ed's position on funding for public education, it ends with "Tell Governor Ed what you think about our under-funded schools." In public appearances and campaign literature, Governor Ed's opponent has made funding of public education an issue in the campaign by focusing on Governor Ed's veto of an income tax increase the previous year to increase funding of public education.

At the time the advertisement is broadcast, no legislative vote or other major legislative activity is scheduled in the State Xero legislature on state funding of public education.

Permitted or Not Permitted?

- b. Candidate Ann and Candidate Bill are candidates for the state senate in District West of State Xero. The issue of State Xero funding for a new mass transit project in District West is a prominent issue in the campaign. Both candidates have spoken out on the issue. Candidate Ann supports funding the new mass transit project. Candidate Bill opposes the project and supports State Xero funding for highway improvements instead. Paul is the executive director of Centre, a section 501(c)(3) organization that promotes community development in District West.

At Centre's annual fundraising dinner in District West, which takes place in the month before the election in State Xero, Paul gives a lengthy speech about community development issues including the transportation issues. Paul does not mention the name of any candidate or any political party. However, at the conclusion of the speech, Paul makes the following statement, "For those of you who care about quality of life in District West and the growing traffic congestion, there is a very important choice coming up next month. We need new mass transit. More highway funding will not make a difference. You have the power to relieve the congestion and improve your quality of life in District West. Use that power when you go to the polls and cast your vote in the election for your state senator."

Permitted or Not Permitted?

6. Business Activity

- a. Museum Kulture is a section 501(c)(3) organization. It owns an historic building that has a large hall suitable for hosting dinners and receptions. For several years, Museum Kulture has made the hall available for rent to members of the public. Standard fees are set for renting the hall based on the number of people in attendance, and a number of different organizations have rented the hall. Museum Kulture rents the hall on a first come, first served basis. Candidate Pam rents Museum K's social hall for a fundraising dinner. Candidate Pam's campaign pays the standard fee for the dinner.

Permitted or Not Permitted?

- b. Theater Lecture is a section 501(c)(3) organization. It maintains a mailing list of all of its subscribers and contributors. Theater Lecture has never rented its mailing list to a third party. Theater Lecture is approached by the campaign committee of Candidate Quick, who supports increased funding for the arts. Candidate Quick's campaign committee offers to rent Theater Lecture's mailing list for a fee that is comparable to fees charged by other similar organizations. Theater Lecture rents its mailing list to

Candidate Q'uicks campaign committee. Theater Lecture declines similar requests from campaign committees of other candidates.

Permitted or Not Permitted?

7. Web Sites

- a. Church Perdition, a section 501(c)(3) organization, maintains a web site that includes such information as biographies of its ministers, times of services, details of community outreach programs, and activities of members of its congregation. Balal, a member of the congregation of Church Perdition, is running for a seat on the town council. Shortly before the election, Church Perdition posts the following message on its web site, "Lend your support to Balal, your fellow parishioner, in Tuesday's election for town council."

Permitted or Not Permitted?

- b. Mobile, a section 501(c)(3) organization, maintains a web site and posts an unbiased, nonpartisan voter guide that is prepared consistent with the principles discussed in Rev. Rul. 78-248. For each candidate covered in the voter guide, Mobile includes a link to that candidate's official campaign web site.

The links to the candidate web sites are presented on a consistent neutral basis for each candidate, with text saying "For more information on Candidate Xavier, you may consult [URL]."

Permitted or Not Permitted?

DISCUSSION AND RULINGS

1. Voter Education, Voter Registration and Get Out the Vote Drives

Section 501(c)(3) organizations are permitted to conduct certain voter education activities (including the presentation of public forums and the publication of voter education guides) if they are carried out in a non-partisan manner. In addition, section 501(c)(3) organizations may encourage people to participate in the electoral process through voter registration and get-out-the-vote drives, conducted in a non-partisan manner. On the other hand, voter education or registration activities conducted in a biased manner that favors (or opposes) one or more candidates is prohibited.

- a. **Not Permitted.** Climate Club is engaged in political campaign intervention when it conducts this get-out-the-vote drive.
- b. **Permitted.** Save Our City is not engaged in political campaign intervention when it operates this voter registration booth.

2. Individual Activity by Organization Leaders

The political campaign intervention prohibition is not intended to restrict free expression on political matters by leaders of organizations speaking for themselves, as individuals. Nor are leaders prohibited from speaking about important issues of public policy. However, for their organizations to remain tax exempt under section 501(c)(3), leaders cannot make partisan comments in official organization publications or at official functions of the organization.

- a. **Not Permitted.** Even though he paid part of the cost of the newsletter, the newsletter is an official publication of the university. Because the endorsement appeared in an official publication of University Kool, it constitutes campaign intervention by the University.

b. **Permitted.** Because Minister Chuck did not make the endorsement at an official church function, in an official church publication or otherwise use the church's assets, and did not state that he was speaking as a representative of Church Righteous, his actions do not constitute campaign intervention by the Church.

3. Candidate Appearances

Depending on the facts and circumstances, an organization may invite political candidates to speak at its events without jeopardizing its tax-exempt status. Political candidates may be invited in their capacity as candidates, or in their individual capacity (not as a candidate). Candidates may also appear without an invitation at organization events that are open to the public.

When a candidate is invited to speak at an organization event in his or her capacity as a political candidate, factors in determining whether the organization participated or intervened in a political campaign include the following:

- Whether the organization provides an equal opportunity to participate to political candidates seeking the same office;
- Whether the organization indicates any support for or opposition to the candidate (including candidate introductions and communications concerning the candidate's attendance); and
- Whether any political fundraising occurs.

In determining whether candidates are given an equal opportunity to participate, the nature of the event to which each candidate is invited will be considered, in addition to the manner of presentation. For example, an organization that invites one candidate to speak at its well attended annual banquet, but invites the opposing candidate to speak at a sparsely attended general meeting, will likely have violated the political campaign prohibition, even if the manner of presentation for both speakers is otherwise neutral.

When an organization invites several candidates for the same office to speak at a public forum, factors in determining whether the forum results in political campaign intervention include the following:

- Whether questions for the candidates are prepared and presented by an independent nonpartisan panel,
- Whether the topics discussed by the candidates cover a broad range of issues that the candidates would address if elected to the office sought and are of interest to the public,
- Whether each candidate is given an equal opportunity to present his or her view on each of the issues discussed,
- Whether the candidates are asked to agree or disagree with positions, agendas, platforms or statements of the organization, and
- Whether a moderator comments on the questions or otherwise implies approval or disapproval of the candidates.

a. **Permitted.** Society Now's actions do not constitute political campaign intervention

b. **Not Permitted.** By selectively providing church facilities to allow Candidate Xavier to speak in support of his campaign, Church O Yeah's actions constitute political campaign intervention.

4. Candidate Appearances Where Speaking or Participating as a Non-Candidate

Candidates may also appear or speak at organization events in a non-candidate capacity. For instance, a political candidate may be a public figure who is invited to speak because he or she: (a) currently holds,

or formerly held, public office; (b) is considered an expert in a non political field; or (c) is a celebrity or has led a distinguished military, legal, or public service career. A candidate may choose to attend an event that is open to the public, such as a lecture, concert or worship service. The candidate's presence at an organization-sponsored event does not, by itself, cause the organization to be engaged in political campaign intervention. However, if the candidate is publicly recognized by the organization, or if the candidate is invited to speak, factors in determining whether the candidate's appearance results in political campaign intervention include the following:

- Whether the individual is chosen to speak solely for reasons other than candidacy for public office;
- Whether the individual speaks only in a non-candidate capacity;
- Whether either the individual or any representative of the organization makes any mention of his or her candidacy or the election;
- Whether any campaign activity occurs in connection with the candidate's attendance;
- Whether the organization maintains a nonpartisan atmosphere on the premises or at the event where the candidate is present; and
- Whether the organization clearly indicates the capacity in which the candidate is appearing and does not mention the individual's political candidacy or the upcoming election in the communications announcing the candidate's attendance at the event.

a. **Permitted.** Society Past has not engaged in political campaign intervention as a result of President George's actions.

b. **Not Permitted.** As a result of these remarks, Symphony Short has engaged in political campaign intervention.

5. Issue Advocacy vs. Political Campaign Intervention

Section 501(c)(3) organizations may take positions on public policy issues, including issues that divide candidates in an election for public office. However, section 501(c)(3) organizations must avoid any issue advocacy that functions as political campaign intervention. Even if a statement does not expressly tell an audience to vote for or against a specific candidate, an organization delivering the statement is at risk of violating the political campaign intervention prohibition if there is any message favoring or opposing a candidate. A statement can identify a candidate not only by stating the candidate's name but also by other means such as showing a picture of the candidate, referring to political party affiliations, or other distinctive features of a candidate's platform or biography. All the facts and circumstances need to be considered to determine if the advocacy is political campaign intervention.

Key factors in determining whether a communication results in political campaign intervention include the following:

- Whether the statement identifies one or more candidates for a given public office;
- Whether the statement expresses approval or disapproval for one or more candidates' positions and/or actions;
- Whether the statement is delivered close in time to the election; • Whether the statement makes reference to voting or an election;
- Whether the issue addressed in the communication has been raised as an issue distinguishing candidates for a given office;

- Whether the communication is part of an ongoing series of communications by the organization on the same issue that are made independent of the timing of any election; and
 - Whether the timing of the communication and identification of the candidate are related to a non-electoral event such as a scheduled vote on specific legislation by an officeholder who also happens to be a candidate for public office. A communication is particularly at risk of political campaign intervention when it makes reference to candidates or voting in a specific upcoming election. Nevertheless, the communication must still be considered in context before arriving at any conclusions.
- a. **Not Permitted.** Organization Remedial has violated the political campaign prohibition because the advertisement identifies Governor Ed, appears shortly before an election in which Governor Ed is a candidate, is not part of an ongoing series of substantially similar advocacy communications by Organization Remedial on the same issue, is not timed to coincide with a non election event such as a legislative vote or other major legislative action on that issue, and takes a position on an issue that the opponent has used to distinguish himself from Governor Ed.
 - b. **Not Permitted.** Centre has violated the political campaign intervention as a result of Paul's remarks at Centre's official function shortly before the election, in which P referred to the upcoming election after stating a position on an issue that is a prominent issue in a campaign that distinguishes the candidates.

6. Business Activity

The question of whether an activity constitutes participation or intervention in a political campaign may also arise in the context of a business activity of the organization, such as selling or renting of mailing lists, the leasing of office space, or the acceptance of paid political advertising. In this context, some of the factors to be considered in determining whether the organization has engaged in political campaign intervention include the following:

- Whether the good, service or facility is available to candidates in the same election on an equal basis,
 - Whether the good, service, or facility is available only to candidates and not to the general public,
 - Whether the fees charged to candidates are at the organization's customary and usual rates, and
 - Whether the activity is an ongoing activity of the organization or whether it is conducted only for a particular candidate.
- a. **Permitted.** Museum Kulture is not involved in political campaign intervention as a result of renting the hall to Candidate Pam for use as the site of a campaign fundraising dinner.
 - b. **Not Permitted.** Theater Lecture has intervened in a political campaign.

7. Web Sites

The Internet has become a widely used communications tool. Section 501(c)(3) organizations use their own web sites to disseminate statements and information. They also routinely link their web sites to web sites maintained by other organizations as a way of providing additional information that the organizations believe is useful or relevant to the public.

A web site is a form of communication. If an organization posts something on its web site that favors or opposes a candidate for public office, the organization will be treated the same as if it distributed printed material, oral statements or broadcasts that favored or opposed a candidate. An organization has control over whether it establishes a link to another site. When an organization establishes a link to another web site, the organization is responsible for the consequences of establishing and maintaining that link, even if the organization does not have control over the content of the linked site. Because the linked content may

change over time, an organization may reduce the risk of political campaign intervention by monitoring the linked content and adjusting the links accordingly.

Links to candidate-related material, by themselves, do not necessarily constitute political campaign intervention. All the facts and circumstances must be taken into account when assessing whether a link produces that result. The facts and circumstances to be considered include, but are not limited to, the context for the link on the organization's web site, whether all candidates are represented, any exempt purpose served by offering the link, and the directness of the links between the organization's web site and the web page that contains material favoring or opposing a candidate for public office.

- a. **Not Permitted.** Church Perdition has intervened in a political campaign on behalf of Balal.
- b. **Permitted.** Mobile has not intervened in a political campaign because the links are provided for the exempt purpose of educating voters and are presented in a neutral, unbiased manner that includes all candidates for a particular office.

NOTE: The discussion above regarding permissible and impermissible activities was taken nearly verbatim from IRS Revenue Ruling 2007-41 (18 June 2007). A complete copy of the ruling is available at www.nscaw.org/docs/rr-07-41.pdf