

# Lobbying & Elections: Dos & Don'ts for Tax-Exempt Entities



North Shore Chapter - Americans United  
for Separation of Church & State

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# **NORTH SHORE CHAPTER**

As a recognized chapter of Americans United for Separation of Church & State, the North Shore Chapter (No. 104) is granted tax-exempt status under a “group exemption” by the Internal Revenue Service (IRS)

As long as NSCAU remains a chapter in good standing, that exempt status will continue



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# What is a Section 501(c)(3) Corporation?

The exempt purposes set forth in Section 501(c)(3) are charitable, religious, educational, scientific, literary, testing for public safety, fostering national or international amateur sports competition, and the prevention of cruelty to children or animals

No part of the net earnings of a Section 501(c)(3) organization may inure to the benefit of any private shareholder or individual

Donations are considered charitable contributions

Section 501(c)(3) organizations are restricted in the amount of political and legislative (lobbying) activities they may conduct



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# **Section 501(c)(3) on Lobbying and Political Campaigning**

## **Among the qualifications for tax-exempt status:**

- Not engaged in substantial efforts to influence legislation
- Not participating or intervening in any political campaign



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### **What Constitutes “Lobbying”?**

Language of Code: “Attempting to Influence Legislation”

Legislation Defined:

- Action by Congress, State legislature, local council or similar governing body.
- Action by public in a referendum, initiative, constitutional amendment, or similar procedure.
- Does not include executive orders / administrative actions.



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# What Constitutes “Lobbying”?

“Attempting to Influence.”

- Contacts, or urges the public to contact, members of a legislative body for the purpose of proposing, supporting, or opposing legislation
- Advocates the adoption or rejection of legislation in a partisan manner



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### **What Constitutes Lobbying?**

#### **“Attempting to Influence.”**

- Does not include appearing before a legislative committee in response to an official request for testimony
- Does not include making available the results of nonpartisan analysis, study, or research
- Does not include “self-defense” appearances / communications with respect to a possible decision that might affect the existence of the organization, its powers and duties, its tax-exempt status, or the deduction of contributions to it.



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### **What Constitutes “Substantial” Lobbying?**

*Sealongood v. Commissioner* (1955):

Expenditures of less than 5% of total activities

**NOT** “substantial legislative activities.”

Many organizations widely regard the 5% rule as a benchmark of permissible legislative activity.





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### **What Constitutes “Substantial” Lobbying?**

**IRS Handbook:** No precise threshold-- “substantial” is factual, case-by-case analysis.

***Christian Echoes National Ministry v. U.S. (1972):*** rejects the 5% test and suggests a new test that involves “the complexity of balancing the organization’s activities in relation to its objectives and circumstances.”



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### **What is the 501(h) Option?**

Internal Revenue Code section 501(h) permits exempt organizations to elect to be covered by IRS regulations that establish an expenditure test for lobbying activities and more specifically define what expenditures are lobbying expenditures.



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### **Why choose the 501(h) Option?**

- Electing to be governed by “Section 501(h)” test avoids being subject to more vague “substantial” lobbying analysis.
- IRS regulations provide “safe harbor” for organizations that elect to remain within specified expenditure limits for direct lobbying and grass roots lobbying.



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# Why choose the 501(h) Option?

## Primary benefits:

- More specific regulatory definitions of lobbying
- Reliance on expenditures rather than the broader focus on activities (which may include volunteer activities).



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# Prohibition on Political Campaign Activities

How Much Political Campaign Activity is Permitted?

**NONE!**

501(c)(3) provides an ***absolute*** prohibition on 501(c)(3) organizations from participating or intervening in any political campaign on behalf of, or in opposition to, any ***candidate*** for public office.



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# **Prohibition on Political Campaign Activities**

## **Prohibited Political Campaign Activities:**

- Endorsing, supporting, or opposing political candidate.
- Contributing to or fundraising for the campaign of any candidate, party, or PAC.
- Permitting the facilities, name, reputation, or resources of organization to be used by candidate, party, PAC, or others to support or oppose a candidate.



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# **Prohibition on Political Campaign Activities**

## **Prohibited Political Campaign Activities:**

- Distributing partisan voter guides or other candidate information that favors or disfavors a particular candidate or party (including voter guides produced by third parties)
- Any other activity that intervenes or otherwise supports or opposes a candidate.



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# **Prohibited Political Campaign Activities**

## **What Penalties does the IRS Impose for Violations ?**

Risk of losing tax exempt status and eligibility to receive tax deductible contributions.

- Initial tax of 10% of entity's political expenditures.
- If initial tax is imposed, and entity does not correct the expenditures within the period allowed by law, an additional tax equal to 100% of the expenditures is imposed against entity.





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# Permitted Political Campaign Activities

## What Activities Are Not Prohibited?

- Voter registration campaigns, provided that the campaigns are strictly nonpartisan.
- Taking a stand on issues as long as there is no expression of support for or opposition to political candidate or party.



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# **Permitted Political Campaign Activities**

## **What Activities Are Not Prohibited?**

Officers, directors, and other organizational leaders endorsing or raising funds in their *personal, individual capacities* for political campaigns if they clearly and unambiguously indicate actions / statements are on own behalf and not behalf of entity.

- But not if using entity's financial resources, facilities, or personnel either directly or indirectly, or if endorsing at official function or publication.



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# **Permitted Political Campaign Activities**

## **What Activities Are Not Prohibited?**

- Distribution of voter guides, *so long as* they are nonpartisan, and do not indicate a preference towards any particular candidate or party.
- Providing political candidates with a forum for speeches and debates, so long as equal time is made available to all candidates, and entity avoids expressing its own views, commenting on candidates' statements, or otherwise implying endorsement of or opposition to any candidate.



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### 3 SIMPLE RULES

1. Organizations can engage publicly almost without limit on moral, political and social justice issues in terms of education, voter guides and voter registration as long as it's done on a non-partisan basis.
2. Organizations can engage in lobbying for or against specific legislation within the 5% limitation, or within the 501(h) election guidelines.
3. Organizations must avoid:
  - Partisan political activity on behalf of candidates and/or political parties, including partisan forums, fundraising and distribution of partisan literature.
  - Non-partisan public forums, legislative scorecards and candidate questionnaires are, however, permitted.



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### SOME IMPORTANT “DoS”

#### ***Take Action on Issues***

- Publicly comment and educate the general public, media and elected officials on moral and social justice issues.
- Advocate for or against public policies by speaking out on governmental decisions.
- Call, write, FAX and e-mail elected officials in support or opposition to specific legislation.



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### SOME IMPORTANT “DoS”

#### ***Take Action on Issues***

- Sponsor or distribute the results of non-partisan studies and research concerning:
  - Legislation
  - Referenda
  - Ballot Propositions
  - Constitutional Amendments



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### SOME IMPORTANT “DoS”

#### ***Be Active During Elections***

- Sponsor non-partisan public forums for candidates and discuss a wide variety of issues.
- Sponsor or participate in “Get Out the Vote” (GOTV) activities, including voter registration drives.
- Develop, prepare and distribute non-partisan candidate questionnaires on a variety of issues.



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THE WINNING FORMULA  
(For Keeping Your 501(c)(3) Status)

$$\left(\text{Education}\right) + \left(\text{Advocacy}\right) - \left(\text{Partisanship}\right) = \text{Success}$$



*Be Active!*

*Get Involved!*

*Make Something Happen!*



# Lobbying & Elections: 14 Examples of Permitted & Non-Permitted Activities



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### Introduction

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.



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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
- 7) Web Sites.



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### **Voter Education, Voter Registration and Get Out the Vote Drives**

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?**



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**Voter Education, Voter Registration and Get Out the Vote Drives**

**Not Permitted.** Climate Club is engaged in political campaign intervention when it conducts this get-out-the-vote drive.



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### **Voter Education, Voter Registration and Get Out the Vote Drives**

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?**



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**Voter Education, Voter Registration and Get Out the Vote Drives**

**Permitted.** Save Our City is not engaged in political campaign intervention when it operates this voter registration booth.



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### **Individual Activity by Organization Leaders**

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?**





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### **Individual Activity by Organization Leaders**

**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.



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### **Individual Activity by Organization Leaders**

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?**



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### **Individual Activity by Organization Leaders**

**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.



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### **Candidate Appearances**

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?**



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### **Candidate Appearances**

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



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### **Candidate Appearances**

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?**



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### **Candidate Appearances**

**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.



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### **Candidate Appearances Where Speaking or Participating as a Non-Candidate**

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?**





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### **Candidate Appearances Where Speaking or Participating as a Non-Candidate**

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



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### **Candidate Appearances Where Speaking or Participating as a Non-Candidate**

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?**



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### **Candidate Appearances Where Speaking or Participating as a Non-Candidate**

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



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### **Issue Advocacy vs. Political Campaign Intervention**

Remedial, Inc. educates the public about the need for improved public education and prepares a radio ad urging an increase in state funding for public education. Governor Ed is the governor. The radio ad is first broadcast on several radio stations in the State beginning shortly before an election in which Governor Ed is a candidate for re-election.

The ad is not part of an ongoing series of substantially similar advocacy communications by Organization Remedial on the same issue. The ad cites statistics indicating public education is underfunded. While the ad 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." Governor Ed's opponent has made funding of public education an issue in the campaign by focusing on Governor Ed's veto of an education tax increase the previous year.

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

**Permitted or Not Permitted?**



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### **Issue Advocacy vs. Political Campaign Intervention**

**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.



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### **Issue Advocacy vs. Political Campaign Intervention**

Ann and Bill are candidates for the state senate. The issue of State funding for a new mass transit project 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 funding for highway improvements instead. Paul is the executive director of Centre, a section 501(c)(3) organization that promotes community development.

At Centre's annual fundraising dinner, which takes place in the month before the election, Paul gives a speech about community development issues including the transportation issues. Paul does not mention the name of any candidate. But, at the conclusion of the speech, Paul says, "For those of you who care about quality of life 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. Use that power when you go to the polls and cast your vote in the election for your state senator."

**Permitted or Not Permitted?**



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### **Issue Advocacy vs. Political Campaign Intervention**

**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.



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### **Business Activity**

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?**





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### **Business Activity**

**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.



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### **Business Activity**

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?**



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### **Business Activity**

**Not Permitted.** Theater Lecture has intervened in a political campaign.



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### **Web Sites**

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?**



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### **Web Sites**

**Not Permitted.** Church Perdition has intervened in a political campaign on behalf of Balal.



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### **Web Sites**

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?**



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### **Web Sites**

**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.



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**THANKS!**

**We hope this presentation has helped you become familiar with some of the DOs & DONTs regarding 501(c)(3) organizations.**



*Be Active!*

*Get Involved!*

*Make Something Happen!*