

ADVOCACY HANDBOOK



A GUIDE TO LOBBYING AND ELECTIONS FOR EXEMPT ORGANIZATIONS

Version 2.0

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Introduction

Not-for Profit, religious, educational and charitable groups and individuals have played a prophetic role in public life throughout history by calling attention to oppression, demanding change, and holding leaders and institutions accountable for their actions and policies. While this is still true in the United States today, too many people are under the mistaken impression that religious or educational organizations cannot have a voice in the public policy arena, fearing that such activities would violate either the Constitutional separation of church and state or Internal Revenue Service regulations. In reality, there is a great deal of public policy and election-related work that any religious group or educational organization can do without jeopardizing its nonprofit tax-exempt status. There are restrictions on certain kinds of political actions and activities, but the range of what is acceptable is wide enough to exhaust the time and resources of any organization without crossing any legal lines.

Generally, the law prohibits political campaign activity by not-for-profit (NFP) charities, churches and educational organizations by defining a 501(c)(3) organization as one "which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office." The distinction between activities on behalf of a candidate and those on behalf of propositions is important because 501(c)(3) organizations are allowed to campaign for or against referendums or ballot initiatives, since the IRS considers this activity to be direct lobbying.

Historical Background

The ban on political campaign activity by charities and churches was created by Congress 52 years ago. The Internal Revenue Service administers the tax laws written by Congress and has enforcement authority over tax-exempt organizations. Here is some background information on the political campaign activity ban and the latest IRS enforcement statistics regarding its administration of this congressional ban.

In 1954, Congress approved an amendment by Sen. Lyndon Johnson to prohibit 501(c)(3) organizations, which includes charities and churches, from engaging in any political campaign activity. To the extent Congress has revisited the ban over the years, it has in fact strengthened the ban. The most recent change came in 1987 when Congress amended the language to clarify that the prohibition also applies to statements opposing candidates.

Under current law organizations exempt under Sec. 501(c)(3) of the Internal Revenue Code cannot intervene in elections for candidates for public office. The IRS uses "all the facts and circumstances of each case" to determine whether prohibited intervention has occurred. The ruling's background section on the law states that partisan intervention can be either direct or indirect, and is "not limited to the publication or distribution of written statements or the making of oral statements on behalf of or in opposition to candidates." A candidate is defined as anyone "who offers himself, or is proposed by others, as a contestant for an elective public office, whether such office be national, State, or local."

Recent Developments

In the aftermath of the 2004 presidential election, significant commentary was heard that indicated an increase in partisan political activity by organizations exempt under Sec. 501(c)(3) of the Internal Revenue Code. As a result, the IRS launched a much-heralded effort, the "Political Activities Compliance Initiative" (PACI). The IRS's latest report on PACI was released on June 8, 2007 and while the introduction to the IRS report refers to "a high level of noncompliance" in 2004, it appears from, an analysis by OMB Watch (www.ombwatch.org) that the IRS based this claim on cases referred for investigation after two rounds of review that eliminated 81 cases. Overall, in 2004 only about one-third of cases referred to the IRS were found to have violations, of these only three, or less than one percent, were severe enough to merit revocation of tax exempt status.

The data for 2006 again indicated relatively low levels of violations. Overall the IRS received 237 referrals, and 137 were dismissed after the initial review. Of the remaining 100 subjected to investigation, 44 are

religious organizations. The IRS has completed investigations, and none merited revocation of exempt status. Here are the results to date:

2006 Closed PACI Cases as of June 1, 2007		
Revocations	0	0
Written advisories	26	4 religious organizations, 22 non-religious organizations
No violations	14	10 religious organizations, 4 non-religious organizations

(Chart courtesy of OMB Watch)

The IRS divided the cases into three categories:

- Type A: single issue/non-complex
- Type B: multiple issues/complex
- Type C: egregious/repetitive alleged violations

There were only four Type C cases, all non-religious organizations. Absent any news reports of the IRS using its authority to take egregious cases to court for seeking an injunction to stop impermissible partisan activity, OMB stated. “. . . we can only assume that even in these cases the violations were not severe enough to merit court action.”

Concurrent with the IRS 2006 PACI Report, the IRS also issued a new Revenue Ruling, 2007-41 on June 18, 2007, which provides guidance to help charities and religious organizations avoid violating the prohibition on partisan intervention for or against candidates in elections. The ruling includes 21 examples and explanations charities and religious organizations can rely on in planning their get out the vote, voter education and mobilization activities.

The ruling summarizes past guidance issued by the IRS in this area, covering two topics:

- Voter guides and education materials
Preparation and distribution of voter guides and other educational materials are permissible if "conducted in a non-partisan manner." Rev. Rul. 78-248 covers candidate questionnaires and voter guides, focusing on content and structure, and Rev. Rul. 80-282 addresses factors that indicate bias in timing and distribution.
- Candidate debates and forums
Rev. Rul. 66-256 and Rev. Rul 74-574 make it clear that sponsoring debates and forums is permissible when "held for the purpose of educating and informing voters, which provides fair and impartial treatment of candidates, and which does not promote or advance one candidate over another..." Rev. Rul. 86-95 says a series of forums are permissible if the content and form are neutral.

Each of the six categories of examples is preceded by a short introduction that sums up the IRS's interpretation of what constitutes either prohibited or allowable activities around elections. The scenarios are simple, and each one illustrates only one type activity. When different activities are combined the IRS says "the interaction among the activities may affect the determination of whether or not the organization is engaged in political campaign intervention." For both combined and more complex situations 501(c)(3)s must use their best judgment about what will maintain neutrality.

Sources

In general, the comments contained herein apply to educational, charitable and religious not-for-profit organizations. By far the greatest contribution to content was made by the original authors on behalf of the Unitarian Universalist Association of Organizations who published this document as "The Real Rules" in 2005, revising previous editions. The Real Rules guide was researched and initially compiled by a volunteer, David S. May, a lawyer and member of Emerson Unitarian Church in Houston, Texas. Further production

was done by Rob Keithan, Director of the Washington Office for Advocacy of the Unitarian Universalist Convention.

This document attempts to build on the base provided by the "The Real Rules" by incorporating additional commentary from sources like OMB Watch and examining the latest IRS rulings and the 2006 PACI Report as to their effect on previous interpretations. While helpful to a certain extent, IRS Rev. Ruling 2007-41 does not, according to OMB Watch, "establish any safe harbors or bright line rules."

Therefore, no pride of authorship accrues to NSCAU as the basic content of this guide was prepared by other organizations. We have merely refined some of the content to conform with the perceived objectives and constraints of our chapter of Americans United and what we believe to be in consonance with the overall guidelines of Americans United 501(c)(3) group exemption, No. 3585.

We would also like to acknowledge the Alliance for Justice, whose publication, "The Rules of the Game: n Election Year Legal Guide for Nonprofit Organizations, provided the general outline for this handbook. They offer many great resources on their website which you are encouraged to utilize: www.afj.org. Also, see Section G (page 15) for a listing of some additional resources.



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IMPORTANT DISCLAIMER

THIS HANDBOOK IS NOT INTENDED TO SERVE AS, NOR SUBSTITUTE FOR, LEGAL ADVICE; NOR SHOULD IT BE USED IN PLACE OF LEGAL COUNSEL. ORGANIZATIONS WITH QUESTIONS OR CONCERNS ABOUT PERMISSIBLE ACTIVITIES BY 501(c)(3) EXEMPT ENTITIES ARE ENCOURAGED TO SEEK THE ADVICE OF COMPETENT COUNSEL.

The discussion presented is intended to clarify and explain Internal Revenue Service guidelines in lay terms as they relate to organizations in the hope that more members will (1) choose to become involved in working for justice through advocacy, community organizing, and public education; and (2) know when it is important to seek legal advice.

This version of the Advocacy Handbook was developed by the North Shore Chapter of Americans United for Separation of Church & State and the information presented does not necessarily reflect the views of the national organization of Americans United, nor any of its officers, directors, staff or membership. While every reasonable effort has been made to avoid errors or omissions, no warranty, express or implied, is made for the completeness and/or accuracy of the information contained herein.

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SUMMARY: THREE SIMPLE RULES

The IRS regulations on the political activities of organizations can be summarized in three simple rules:

1. Without limits on time, effort and expense, organizations and their representatives may work publicly on moral and political issues by advocating positions in the media and to elected officials; educating and mobilizing members and the general public, and working in local coalitions or partnerships on issues of social justice. Organizations can also perform certain activities to educate and register voters if they are done in a non-partisan manner.
2. Within narrow limits on time, effort and expense, organizations and their representatives may engage in lobbying-defined by the IRS as advocating for or against specific pieces of legislation-as an "unsubstantial" portion of an organization's activities. The IRS has not provided a guideline for what is "unsubstantial," but experts generally agree that up to 5% is acceptable. Since the definition of activities includes the total amount of money, staff, and volunteer time that goes into running the organization, most organizations will never come near the 5% line.
3. There is a total limit on partisan political activity. Organizations and their representatives can do nothing that advocates for or against candidates for public office or political parties. This includes fundraising on behalf of candidates and donating meeting space, among other things. Election-related activities such as candidate questionnaires and forums are acceptable so long as all major candidates are invited to participate and they cover a broad range of issues.

Note: The restrictions against partisanship described here apply only to a organization as a legal entity, or to a person or group speaking in the name of the organization. An officer or organization member may freely make partisan statements as an individual. However, if they are identified by or likely to be associated with the organization, they should make it clear that they are speaking only in their own name.

DO and DO NOT

DO . . . Take Action on Issues

- Publicly comment and educate the general public and elected officials on moral and political issues.
- Advocate for or against specific public policies by speaking out on decisions by government agencies, executives, or courts.
- Call, write, and meet with elected officials to support or oppose specific pieces of legislation.
- Sponsor and distribute the results of "nonpartisan analysis, study or research" concerning specific legislation or ballot measures, such as referenda, state constitutional amendments, city charter amendments, etc. Careful attention should be paid to being objective and nonpartisan.

DO . . . Be Active During Elections

- Conduct nonpartisan voter registration drives. Register and encourage members of your organization and others in the community to vote.
- Hold candidate forums. You must invite all legally qualified candidates for office and discuss a large variety of topics.
- Distribute questionnaires to all candidates. They must cover a broad range of topics and be presented in an unbiased way. The purpose of the questionnaires must be education and not advocacy.

- Make efforts to educate candidates on the issues important to your organization and encourage them to adopt a sympathetic position.

DO NOT . . . Engage in Partisan Activities

- Do not endorse or oppose candidates for public office as an organization. Not For Profit exempt groups may not advise members of the organization or the public at large, directly or indirectly, to vote for or against specific candidates or political parties.
- Do not make financial contributions to candidates. Religious groups may not collect money on behalf of, or provide in-kind services to a candidate. This includes creating a political action committee.
- Do not distribute or display partisan campaign literature or voter guides.

A. TAX-EXEMPT STATUS: WHAT IS A 501(c)(3)?¹

NFP organizations and religious organizations, like many other charitable organizations, qualify for exemption from Federal income tax under Internal Revenue Code (IRC) Section 501(c)(3) and are generally eligible to receive tax-deductible contributions. In order to qualify for tax exemption, an organization must meet the following requirements:

- The organization must be organized and operated exclusively for religious, educational, scientific, or other charitable purposes;
- Net earnings may not accrue to the benefit of any private individual or shareholder;
- The organization may not make lobbying a substantial part of its activity;
- The organization may not participate or intervene in (including the publishing or distributing of statements), any political campaign on behalf of or in opposition to any candidate for public office; and,
- No part of the organization's purposes or activities may be illegal or violate fundamental public policy.

Organizations that meet the above requirements are automatically considered exempt and are not required to apply for and obtain recognition of tax-exempt status from the Internal Revenue Service (IRS). However, many organizations seek recognition of exempt status from the IRS to assure organizational leaders, members and contributors that the institution is recognized as tax-exempt and qualifies for related tax benefits.

B. ADVOCACY and LOBBYING

1) General Issue Advocacy

There is no limit on the amount of time, effort, or expense organizations may work on general political issues such as civil rights, civil liberties, economic justice, the environment, or peace. This includes: advocating positions in the media and to elected officials; educating and mobilizing members and the general public, and working in local coalitions or partnerships on issues of social justice.

¹ Section A is essentially a direct quote from Tax Guide for Churches and Religious Organizations. IRS Publication 1828 (Rev. 7-2002), p. 2.

2) Influencing Legislation (Lobbying) ²

In general, no organization, including a organization, may qualify for 501(c)(3) status if a substantial part of its activities is "attempting to influence legislation" (commonly known as lobbying). "Legislation" includes:

- Action by Congress, any state legislature, any local council, or similar governing body, on acts, bills, resolutions, or similar items (such as legislative confirmation of appointive offices including judges); or
- Action by the public in a referendum, ballot initiative, constitutional amendment or similar procedure.

It does not include actions by executive, judicial, or administrative bodies. A organization will be regarded as "attempting to influence legislation" if it contacts, or urges the public to contact, members or employees of a legislative body for the purpose of proposing, supporting, or opposing legislation, or if the organization advocates the adoption or rejection of legislation.

a) Measuring Lobbying: the Substantial Part Test ³

Whether or not a organization's attempts to influence legislation constitute a substantial part of its overall activities is determined on the basis of all the pertinent facts and circumstances in each case. The IRS considers a variety of factors, including the time devoted (by both compensated and volunteer workers) and the expenditures devoted by the organization to the activity, when determining whether the lobbying activity is substantial.

Although the IRS has not defined what is "substantial," court cases and many legal advisors have identified 5% as the general rule of thumb. The IRS has also noted that where 16 to 20% of total activities have been devoted to lobbying, those activities have generally been considered "substantial." ⁴

b) Lobbying During Election Years ⁵

If a organization has a history or record of criticizing legislators, lobbying them, and working to hold incumbents accountable, it may continue to do so during an election year. However, close to an election, the IRS may view a sudden entry into the political arena as partisan. A track record of consistent activity is the best safeguard against these charges.

C. NONPARTISAN ANALYSIS ⁶

Organizations may sponsor and distribute to their members, the general public, or governmental bodies, a "nonpartisan analysis, study, or research" of legislation (including ballot measures, referenda, state constitutional amendments, city charter amendments, etc.) without the activity being considered lobbying or partisan. Such nonpartisan analysis must be independent and objective in order to not count as lobbying. However, it may advocate a particular position or viewpoint so long as there is sufficiently full and fair presentation of the pertinent facts to enable the public or an individual to form an opinion or conclusion, independently of any position or viewpoint expressed.

² The first portion of section B2 is a direct quote from IRS Publication 1828, p. 5.

³ The first paragraph of B2a is a direct quote from IRS Publication 1828, p. 5.

⁴ The second paragraph of B2a is derived from Lobbying Issues in Exempt Organizations Judith E. Kindell & John F. Reilly. Continuing Professional Education Technical Instruction Program for Fiscal Year 1997, 277 n.20 (1996), p. 280.

⁵ Section B2b is derived from The Rules of the Game: An Election Year Legal Guide for Nonprofit Organizations, Colvin, Gregory L. and Lowell Finley. Alliance for Justice. (1996), p. 18.

⁶ Section C is derived from Lobbying Issues in Exempt Organizations, p. 274, 302.

If you plan to produce an analysis that will be used for lobbying-which is completely permissible-simply be sure to include the money and time spent on it in your substantial part calculations. A purported analysis that is merely a presentation of unsupported opinion would be considered either lobbying (and tightly limited) or partisanship (and prohibited). To be exempt from lobbying or partisanship restrictions, a nonpartisan analysis that states a view on specific legislation must not encourage a recipient to take action, such as by contacting legislators.

D. POLITICAL (ELECTORAL) ACTIVITIES ⁷

All 501(c)(3) organizations are absolutely prohibited from directly or indirectly participating in any political campaign for or against any candidate for elective public office. Contributions to political campaign funds or public statements of position (verbal or written) made on behalf of the organization for or against any candidate for public office clearly violate the prohibition against political campaign activity and may result in penalties.

Certain activities or expenditures may not be prohibited depending on the facts and circumstances. For example, certain voter education activities (including the presentation of public forums and the publication of voter education guides) and voter mobilization activities (including registration and Get-Out-The-Vote drives) conducted in a non-partisan manner are acceptable. Any activity that reveals a bias for or against particular candidates is prohibited.

1) Supporting/Opposing Candidates

a) Endorsements/Advertising

Organizations may not: issue letters of endorsement or opposition printed on organization letterhead; distribute campaign literature at organizational events; display campaign signs on organization property, or engage in any other activities that could be construed as endorsing or opposing a candidate. This applies to elections at all levels, from school board to national offices, regardless of whether or not it is a partisan election.

b) Financial Contributions

Organizations may not contribute money to candidates, solicit contributions on their behalf, donate to candidates' political action committees, or create political action committees of their own. Individuals may not fundraise for candidates at the organization (except in compliance with the guidelines in the next section), or use organizational letterhead or other official materials for such purposes.

c) In-Kind Contributions (Business Activity) ⁸

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. Examples include selling or renting of mailing lists, renting office or meeting space, or accepting paid political advertising. To ensure that your organization does not engage in prohibited political campaign activity, make sure that:

- Any good, service, or facility is available to all candidates on an equal basis;
- Any good, service, or facility is available to the general public, not only to candidates;
- The fees charged are at the organization's customary and usual rates; and
- The activity is an ongoing activity of the organization and is not conducted only for the candidate.

⁷ The first two paragraphs of d) are essentially a direct quote from IRS Publication 1828, p. 6.

⁸ Section D1c is essentially a direct quote from IRS Publication 1828, p. 11.

d) Publications⁹

Publications produced by exempt NFP organizations may not support or oppose candidates in any official capacity. Organizations may sell paid political advertising only if such advertising is (1) accepted on the same basis as other non-political advertising; (2) identified as paid political advertising; and (3) available on an equal basis to all candidates. The organization must expressly state that it does not endorse the candidates whose ads appear. Additional factors, such as the manner in which the organization solicits political ads and how they are presented, would also be considered.

For example, it would be inappropriate to actively solicit ads from one candidate while merely accepting ads from other candidates. Once a organization accepts paid political advertising, it may not selectively decline ads from candidates whose views may not accord with those of the organization. Free or reduced-rate political ads should not be accepted, as this would constitute an in-kind contribution to the candidate. It is important to note that organizations are subject to the unrelated business income tax on the income from their paid political advertising.

e) Individual Activity by Not for Profit Exempt Leaders¹⁰

The political campaign activity prohibition is not intended to restrict free expression on political matters by leaders of organizations speaking 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), NFP organization leaders cannot make partisan comments in organizational publications or at official functions. To avoid potential attribution of their comments outside of organizational functions and publications, religious leaders who speak or write in their individual capacity are encouraged to clearly indicate that their comments are personal and not intended to represent the organization.

2) Inviting a Candidate to Speak¹¹

Depending on the facts and circumstances, a organization may invite political candidates to speak at events without jeopardizing its tax-exempt status. Political candidates may be invited in their capacity as candidates, or individually (not as a candidate).

When a candidate is invited to speak as a political candidate, the organization must take steps to ensure that:

- It provides an equal opportunity to other candidates seeking the same office;
- It does not indicate any support of or opposition to the candidate (this should be stated explicitly when the candidate is introduced and in communications concerning the candidate's attendance); and
- No political fundraising occurs.

a) Equal Opportunity to Participate

In determining whether candidates are given an equal opportunity to participate, a organization should consider the nature of the event to which each candidate is invited. For example, a 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 be found to have violated the political campaign prohibition, even if the manner of presentation for both speakers is otherwise neutral.

⁹ Section D1d is essentially a direct quote from Politics and the Pulpit, p. 13-14.

¹⁰ Section D2 is essentially a direct quote from IRS Publication 1828, p. 7. See also Rev. Rul.2007-41, p. 4

¹¹ Section D2 is derived from IRS Publication 1828, p. 8-10 and Rev. Rul 2007-41, p 5-6.

b) Public Forum ¹²

The presentation of public forums or debates is a recognized method of educating the public. A public forum involving several candidates for public office may qualify as an appropriate educational activity if it is conducted in a nonpartisan manner. To ensure that your organization does not engage in prohibited political campaign activity, make sure that:

- All candidates (or at least all major candidates) are invited to participate;
- Non-biased questions for the candidates are prepared and presented by an independent nonpartisan panel;
- 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;
- Each candidate is given an equal opportunity to present his or her views on the issues discussed;
- Candidates are not asked to agree or disagree with positions, agendas, platforms or statements of the organization; and
- Comments or questions from the moderator do not imply approval or disapproval of any or all the candidates.

c) Speaking as a Non-Candidate ¹³

A organization may invite political candidates (including members of the organization) to speak in a non-candidate capacity. For instance, a political candidate may be a public figure because he or she: (a) currently holds, or formerly held, public office; (b) is considered an expert in a non-political field; (c) is a celebrity; or (d) has led a distinguished military, legal, or public service career. When a candidate is invited to speak at an event in a non-candidate capacity, it is not necessary for the organization to provide equal access to all political candidates. However, the organization must ensure that:

- The individual speaks only in a non-candidate capacity;
- Neither the individual nor any representative of the organization makes any mention of his or her candidacy or the election; and
- No campaign activity occurs in connection with the candidate's attendance.

In addition, the organization should clearly indicate the capacity in which the candidate is appearing and should not mention the individual's political candidacy or the upcoming election in the communications announcing the candidate's attendance at the event.

3) Candidate Questionnaires ¹⁴

Organizations may send questionnaires to candidates and ask them where they stand on issues. Questionnaires should be sent to all candidates, and the organization should not compare the candidates' answers to the organization's preferred position on issues.

¹² Rev. Rul. 2007-41 (June 18, 2007) See discussion at page 2

¹³ Rev. Rul. 2007-41 (June 18, 2007) See discussion at pages 6-8

¹⁴ Section D3 is derived from *The Rules of the Game: An Election Year Legal Guide for Nonprofit Organizations*. P. 22-23.

Organizations should be sure that the questionnaire itself is not biased, that it covers a wide range of issues selected on the basis of their importance to the electorate as a whole, and that the reports of the poll or questionnaire are reported in an accurate and non-biased manner. For this reason, using the candidates' complete responses to questions and polls is suggested. The guidelines listed in the voter guide section that follows also apply to candidate questionnaires and may be helpful.

4) Voter Guides ¹⁵

Some organizations undertake voter education activities by distributing voter guides. Voter guides are generally distributed during an election campaign and provide information on how all candidates stand on various issues. These guides may be distributed if their purpose is educating voters. They may not be used to favor or oppose candidates for public elected office.

To ensure that your organization does not engage in prohibited political campaign activity, make sure that:

- The guide includes a broad range of issues that the candidates would address if elected to the office sought;
- The description of issues is neutral;
- All candidates for an office (or all major candidates) are included;
- The descriptions of candidates' positions are either the candidates' own words in response to questions, or a neutral, unbiased and complete compilation of all candidates' positions; and
- The candidates' positions are not compared to the organization's position.

Organizations should be extremely wary of voter guides produced by outside groups. Many of these groups hold a different type of tax-exempt status that permits them to engage in political activities that organizations cannot. Also, when a guide has been produced by an outside organization, organization leaders have no way of knowing if the answers are accurate or if the guide has been intentionally slanted to favor a certain candidate. If a voter guide produced by an outside group is determined to be partisan in character and is distributed in a organization, the IRS has the legal right to penalize the organization even though it did not produce the guide.

During an election campaign, a organization may distribute the voting records of all members of the legislature on a wide range of subjects, provided the structure and content or the materials avoids bias. Again, the IRS may view a sudden entry into the political arena close to an election as partisan. A track record of consistent activity at non-election times is the best safeguard against these charges.

5) Voter Registration and Get-Out-The-Vote (GOTV) Drives ¹⁶

Organizations may sponsor voter registration drives. They may encourage voting and even help people get to the polls on election day, but they may not tell people how to vote. It is generally acceptable to target voter registration and GOTV efforts at or in communities with historically low turnout. Registration sites should not be selected in cooperation with a political campaign, according to the identity of the incumbent, or based upon candidate's alignment with the organization. During the voter registration or GOTV campaign, participating staff and volunteers must not write, say, or do anything that would indicate a partisan purpose.

The Federal Election Commission (FEC) requires that all material prepared for distribution to the general public in connection with a voter registration drive include the full names of all drive sponsors. The FEC also suggests posting a sign with a statement similar to this:

¹⁵ Section D4 is essentially a direct quote from IRS Publication 1828, p. 10-11.

¹⁶ The first 3 paragraphs of Section D5 are derived from *The Rules of the Game: An Election Year Legal Guide for Nonprofit Organizations*, p. 17, 20-22. See also Rev. Rul 2007-41, p. 3

"Our voter registration services are available without regard to the voter's political preference. Information and other assistance regarding registering or voting, including transportation and other services offered, shall not be withheld or refused on the basis of support for or opposition to particular candidates of a particular party."

Acceptable and Unacceptable Messages for Voter Mobilization ¹⁷

Organizations may not attempt to intervene surreptitiously in a political campaign by using "code words" such as "conservative", "liberal", "anti-gay", or "pro-choice" in messages to affect the prospects for the election of candidates. The IRS discourages suggestive language such as, "vote green," "throw out the liberals," or "vote pro-choice." This language may also be interpreted as indirect political activity.

In determining the permissibility of a voter registration slogan, ask yourself: Why are we mentioning this issue in connection with voter registration? Are we trying to get people to vote for candidates who agree with our view? Or are we only trying to overcome voters' apathy?

Organization may use slogans such as:

- "The next election will set the country's course on civil rights, health care, welfare, jobs, taxes, support for the arts and the environment. Your vote counts. Register now."
- "Challenge authority. You're 18, and you haven't registered to vote? Why not here? Why not now?"
- "You can have an impact on the decisions affecting your life. Register to vote now."
- "The future of affirmative action in this state will be decided next November. Register to vote today."
- "Housing. Human Services. Jobs. You count. Register and vote."

Organization may not use slogans such as:

- "Vote green. Register Here."
- "Let's get out the pro-life (or pro-choice) vote. Register here."
- "Support family values. Register Now"
- "Budget cuts are reducing the services provided by this agency. Register to vote here, and let the candidates know you won't take it anymore"

Both message and target audience are important. The narrower your target audience, the broader your message must be. Always remember that your intent must be promoting participation, not changing or affecting who holds office.

Please Note:

When evaluating such cases, the IRS looks at all the surrounding facts and circumstances, including statements of intent reflected in board meeting minutes and correspondence, the timing and targeting of the message, and any other materials provided to new voters about the candidates, incumbent officials, the issues or the upcoming election.

¹⁷ This latter portion of Section D5a is essentially direct quotes from *The Rules of the Game: An Election Year Legal Guide for Nonprofit Organizations*, p. 17, 20-22.

E. SPECIAL NOTES ON WEB SITES ¹⁸

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.

F. IRS Enforcement and Consequences

1) Enforcement ¹⁹

There are special audit procedures that the IRS must follow before commencing any inquiry about potential violation of the political activity prohibition by a organization. The IRS may begin a tax inquiry only if the Director of Exempt Organizations Examinations reasonably believes, based on facts and circumstances recorded in writing, that the organization may not be qualified for section 501(c)(3) tax-exemption. Once an inquiry is begun, the IRS must follow special procedures set forth in the Internal Revenue Code. Thus, the IRS does not have unfettered discretion to investigate activities by organizations, including violations of the political activity prohibition, and must obtain high-level authorization before doing so. Generally, IRS inquiries about potential violations of the political activity prohibition by organizations are initiated based upon facts reported by the media or complaints submitted by third parties.

2) Consequences ²⁰

A organization not only jeopardizes its tax-exempt status under section 501(c)(3) for participating in political campaign activities, but it also may become subject to an excise tax on its political expenditures. This excise tax may be imposed in addition to or instead of revocation. Also, the organization would be required to correct the violation.

¹⁸ This discussion is verbatim from Rev. Rul 2007-41, p 11-12

¹⁹ Section F1 is derived entirely from *Politics and the Pulpit*, p. 15.

²⁰ Section F2 is derived entirely from IRS Publication 1828, p. 12, except for 2a which is cited in the last endnote.

a) Revocation. Outright revocation of tax-exempt status is extremely rare. The only recent example came in 1995, when the IRS revoked the status of the Church at Pierce Creek for running a full-page ad in several major newspapers that ended with the question: "How then can we vote for Bill Clinton?" and added: "tax-deductible donations for this advertisement gladly accepted. Make donations to: The Church at Pierce Creek." ²¹

b) Excise tax. An initial tax is imposed on an organization at the rate of 10 percent of the political expenditures. Also, a tax at the rate of 2.5 percent of the expenditures is imposed against the organization managers (jointly and severally) who, without reasonable cause, agreed to the expenditures knowing they were unlawful. The tax on management may not exceed \$5,000.

In any case in which an initial tax is imposed against a organization, and the expenditures are not corrected within the period allowed by law, an additional tax equal to 100 percent of the expenditures is imposed against the organization. In that case, an additional tax is also imposed against the organization managers (jointly and severally) who refused to agree to make the correction. The additional tax on management is equal to 50 percent of the expenditures and may not exceed \$10,000 with respect to any one expenditure.

c) Correction. Correction of a political expenditure requires the recovery of the expenditure, to the extent possible, and establishment of safeguards to prevent future political expenditures. Please note that a organization that engages in any political campaign activity also needs to determine whether it is in compliance with the appropriate federal, state or local election laws, as these may differ from the requirements under Section 501(c)(3).

G. STRUCTURES TO AVOID LIMITATIONS

Many secular advocacy groups form affiliates that have a separate legal and financial identity that can legally engage in limited partisan political and unrestricted lobbying activities. Organizations are also allowed to form such affiliates. Individual organizations should obtain legal advice on establishing and operating such organizations.

Perhaps the most appropriate form of affiliate for organizations would be a Section 501(c)(4) (social welfare) organization under the IRS Code. Such organizations are tax-exempt, but not eligible to receive tax-deductible contributions. Such organizations can engage in an unlimited amount of lobbying and can engage in partisan political activities as a secondary activity.

Some commentators strongly recommend that a 501(c)(4) affiliate established by a organization restrict that affiliate's activities to only lobbying with no partisan activities. They argue that by allowing the affiliate to only conduct lobbying, the organization avoids the chance that the IRS will find the organization to have participated in indirect partisan political activity, which is prohibited. Note also that organizations are not eligible to elect Section 501(h) status, as can secular advocacy groups, to simplify the measurement of what is "unsubstantial" lobbying activity.

H. SUMMARY AND CONCLUSIONS ²²

No one disputes the general concept that good laws are essential to good public policies, nor the idea that public charities are often the most appropriate organizations to educate and inform public policy makers. However, too many nonprofits believe that lobbying activities will jeopardize their organization's tax-exempt status.

²¹ Church Loses Exempt Status for Political Ad Don Kramer's Nonprofit Issues May 1999. <http://www.nonprofitissues.com/lead/199may1.html> See also *Branch Ministries v. Rossotti*, No. 950724, March 30, 1999.

²² Most of Section H is adopted directly from the "Nonprofit Advocacy Brochure" published by the Alliance for Justice, www.alj.org

Misconceptions about what is permitted and what is not have the unfortunate effect of dampening progress toward public policies that work, by preventing public charities from doing what they are most suitable to do—representing constituencies that have a limited voice in the policy process.

Therefore, if you're not lobbying, you're not exercising your full rights under the law. The IRS actually encourages nonprofits to engage in lobbying and other advocacy activities, as long as they adhere to some broad spending limitations. The guidelines are easy to follow.

Based on their overall expenditures, most charities can spend as much as 20 percent of their budget on direct lobbying activities intended to influence legislation. Because the limits are based on the money you spend, there are no limits on volunteer efforts and other cost-free activities. Likewise, there are no limits on other kinds of public policy work, such as litigation, research, public education, and attempting to influence decisions by administrative agencies.

Some of the most extraordinary achievements in recent decades—for the environment, social justice, community renewal, consumer protection, public safety, and civil rights—have come about because nonprofits were willing to take their rightful place at the policymaking table.

- Less than five years after it was founded by victims' families, Mothers Against Drunk Driving (MADD) persuaded Congress to pass a law mandating that every state raise the drinking age to 21—vastly reducing the number of alcohol-related fatalities.
- The Council of Senior Centers and Services of New York City preserved \$15 million in threatened funding for senior centers and weekend meal programs with a lobbying effort that included bringing 5,000 seniors to city hall.
- Concerned with the high rate of lead poisoning among Milwaukee children, the Wisconsin Citizen Action Fund (WCAF) recruited and trained a task force of parents to advocate for lead-safe housing in their neighborhoods. Those efforts resulted in a city ordinance requiring landlords to certify their property as lead-safe.

Lobbying by nonprofits ensures that people have a voice in shaping the policies that affect them. It makes government accountable to the common good. You are encouraged to further explore the area of Not-for-Profit Advocacy and find ways that your organization can lobby for more effective public policy.

Get Involved! Make a Difference! Lobby for Justice!

I. ADDITIONAL INFORMATION AND REFERENCES

The Alliance for Justice
11 Dupont Circle, N.W. Suite 200
Washington DC 20036
Phone: 202-822-6070
Email: alliance@afj.org
Web: www.afj.org

The Interfaith Alliance and
The Interfaith Alliance Foundation
1331 H Street, NW, 11th Floor
Washington, DC 20005
Phone: 202-639-6370
Email: tia@interfaithalliance.org
Web: www.interfaithalliance.org

Internal Revenue Service
www.irs.gov/charities

Tax Guide for Churches and Religious
Organizations. Publication 1828 (Rev. 9-2006).

IRS Revenue Ruling 2007-41 provides guidelines for exempt organizations on the scope of the tax law prohibition of campaign activities by section 501(c)(3) tax-exempt organizations. The ruling sets out 21 factual situations involving 501(c)(3) organizations, including churches, and activities that may be prohibited campaign intervention.

OMB Watch
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Unitarian Universalist Association
of Congregations
25 Beacon Street
Boston, MA 02108
(617) 742-2100
www.uua.org
info@uua.org

Political Research Associates
1310 Broadway, Suite 201
Somerville, MA 02144
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The Pew Forum on Religion & Public Life
1150 18th Street, NW Suite 775
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Web: www.pewforum.org

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ACLU
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Americans United
For Separation of Church and State
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North Shore Chapter - Americans United
For Separation of Church and State
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Ontario Consultants on Religious Tolerance
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Secular Coalition for America
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www.secular.org



QUICK REFERENCE TO PERMITTED ACTIVITIES BY 501(c)3, 501(c)4, AND 527 ORGANIZATIONS

Note: This "Quick Reference" is designed to provide initial guidance with respect to certain activities. The statutes are broad and are supplemented by hundreds of pages of IRS regulations and interpretations. In all cases, the statutory and IRS interpretations will govern. **This resource is not intended to be formal legal advice; nor should it be used in place of legal counsel.** (See also IRS Publication 1828 and Rev Rul 2007-41)

Activity	C3	C4	527 "Soft" PAC	Federal PAC
1 Lobbying, including judicial nominations and ballot measure advocacy	Yes	Yes	Yes	
2 Public education and training on political participation	Yes	Yes	Yes	
3 Inform candidates on justice issues ⁴	Yes	Yes	Yes	Yes
4 Creation of and distribution/publication of Legislative "Scorecards"	Yes ¹	Yes	Yes	
5 Candidate Questionnaires	Yes ¹	Yes	Yes	
6 Local door-to-door canvassing on issues consistent with No. 1, above	Yes	Yes	Yes	
7 Sponsoring candidate debates	Yes ¹	Yes	Yes	
8 Advocate for justice issues ⁴ to be included in party platforms	Yes	Yes	Yes	
9 Voter registration and participation campaigns	Yes	Yes	Yes	Yes
10 Conduct, publicize and distribute polls on justice issues	Yes	Yes	Yes	Yes
11 Targeted media campaigns in support of 1, 2, 4, 8, 9, 10 & 12	Yes	Yes	Yes	Yes
12 Educational and persuasive mailings on justice ⁴ issues	Yes	Yes	Yes	Yes
13 Express Advocacy and/or candidate-independent expenditures	No	Yes ²	Yes ²	Yes
14 Direct campaign contributions (candidate or issue)	No ³	No ³	No ³	Yes

¹ Must be done on a multi-partisan basis, offering all candidates an opportunity to participate

² Expenditures are subject to certain limitations governed by IRS code, based on a percentage of member contributions

³ All 501(c)(3) organizations are absolutely prohibited from directly or indirectly participating in any political campaign for or against any candidate for elective public office. Contributions to political campaign funds or public statements of position (verbal or written) made on behalf of the organization for or public office clearly violate the prohibition against political campaign activity.

⁴ The IRS has suggested in several contexts that 501(c)(3) election-related activities should address a broad, rather than narrow, range of policy issues. The IRS is concerned that focusing on one issue implicitly encourages voters to measure candidates against the organization's stance on the issue. Justice issues relate to education, welfare distribution, social security and similar social justice issues.



Comparison of 501(c)(3), 501(c)(4) & Political Organizations

Note: This "Quick Reference" is designed to provide an overview of the more important factors which differentiate one type of organization from another. Interpretations. In all cases, the statutory and IRS interpretations will govern. **This resource is not intended to be formal legal advice; nor should it be used to replace legal counsel.**

Description	501(c)(3)	501(c)(4)	Political Organization (PO)
Tax Status	Tax Exempt: Contributions to a 501(c)(3) are generally tax deductible; not subject to federal gift tax	Contributions to a 501(c)(4) are generally not tax-exempt and may be subject to federal gift tax	Contributions to a PO are not tax deductible, but not subject to federal gift tax
Related Organizations	May establish a 501(c)(4)	May establish a 501(c)(3)	May be established by a 501(c)(4)
Lobbying Activities	Limited expenditures to influence legislation, ballot measures and judicial offices	No limit on lobbying expenditures	Limited (insubstantial) lobbying expenditures allowed but may be subject to tax if not furthering political purpose
Political Activities	Prohibited from engaging in partisan political activities	Partisan political activities permitted subject to campaign finance laws	No limit on aggregate expenditures, subject to campaign finance laws
Penalties	May not establish a PO Revocation of exempt status and/or excise taxes	Must be secondary, not primary purpose May establish a PO Political expenditures taxed	
Application for Tax-Exempt Status and Reporting Requirements	IRS Form 1023 required. Annual Report - Form 990 w/ Schedules A & B	IRS Form 1024 required. Annual Report - Form 990 Political expenditures on Form 1120-POL	Various IRS Forms required based on type of organization Annual Reports required, Contribution Reports required
IRS Requirements for Disclosing non-deductibility of contributions on Fund-raising Solicitations	Not Required	Disclosure of non-deductibility required for all solicitations (print, radio, TV, Internet) Business expense deductions may require disclosure of percentage of dues used for lobbying & political activity	Disclosure of non-deductibility required for all solicitations (print, radio, TV, Internet). Other disclosures may be required under state law and campaign finance laws

NOTE: In general, these rules apply to public charities, religious and educational organizations. Foundations are subject to different (and more stringent) rules under the Internal Revenue Code and Regulations



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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