

Election Year Activities for Section 501(c)(3) Organizations: Frequently Asked Questions

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During election years, there is a greater likelihood that tax-exempt organizations may intentionally or unintentionally participate in impermissible political campaign activities resulting in the loss of their tax-exempt status or the imposition of excise taxes. As further evidence of Internal Revenue Service (IRS) attention to this issue, on April 17, 2008, the IRS announced that its Political Activities Compliance Initiative will remain in effect for 2008. In a news release, the IRS reminds Section 501(c)(3) organizations that they are prohibited from engaging in direct or indirect political campaign activities. As the 2008 election season approaches, the IRS plans to continue enforcement, to issue additional guidance and to educate the public and tax-exempt community so that Section 501(c)(3) organizations refrain from engaging in improper political campaign activities. For more information, please visit the IRS website at <http://www.irs.gov/charities/charitable/article/0,,id=181565,00.html>. Because many questions arise during election year periods with respect to whether an activity is a prohibited political activity, the following answers to frequently asked questions address whether a particular activity is permissible.

May Section 501(c)(3) organizations participate in political activities?

No. Section 501(c)(3) tax-exempt organizations are subject to a ban on the conduct of political activities. More specifically, they are prohibited from participating in, or intervening in (including the publishing or distributing of statements), any political campaign on behalf of or in opposition to any candidate for public office. The prohibition of political activities is absolute. Accordingly, one dollar spent by a Section 501(c)(3) organization is arguably sufficient to justify revocation of tax-exempt status. Political activities, however, are distinct from lobbying activities (*i.e.*, attempts to influence legislation), which Section 501(c)(3) organizations (other than private foundations) may conduct on an insubstantial basis.

Does it matter whether the candidate is running for local or state office, rather than a federal office?

No. For purposes of the prohibition against political activities, a “candidate for public office” is anyone who offers himself or herself, or is proposed by others, as a candidate for an elective public office. A public office includes everything from president of the United States to the local animal control officer. It is irrelevant whether the public office is national, state or local.

When will the acts of senior executives or other individuals associated with a Section 501(c)(3) organization be attributed to the organization?

Frequently, individuals closely associated with Section 501(c)(3) organizations make statements or engage in actions that may be interpreted as intervention in a political campaign. In order to avoid attribution of such political activities to the Section 501(c)(3) organization, any individual who is closely associated with a Section 501(c)(3) organization and who engages in political activities should make it clear the views being expressed are the individual’s views, and they are not speaking on behalf of the organization. Moreover, while the prohibition against political campaign activity is not intended to curtail an individual’s freedom of expression, individuals closely associated with Section 501(c)(3) organizations should avoid expressing their personal views in their organization’s publication or at their organization’s expense.

May employees of a Section 501(c)(3) organization engage in political activities on company time?

In general, no. Permitting employees to engage in political activities while on company time could be interpreted as impermissible intervention in a political campaign, depending upon the facts and circumstances. While employees are permitted to engage in political activities outside of their employment, the payment of compensation to such person while engaged in such activities (*e.g.*, paid leave to work on a campaign) could be problematic.

May a Section 501(c)(3) organization form or otherwise contribute to a Political Action Committee (PAC)?

No. Section 501(c)(3) organizations are precluded from forming or supporting a PAC. Accordingly, a Section 501(c)(3) organization may not contribute funds to a candidate or sponsor a fundraising event for a candidate. The directors, officers and key employees of a Section 501(c)(3) organization, however, are permitted to form an independent PAC. If directors, officers and key employees form a “non-connected” PAC, they must take extreme care in the establishment and operation of the PAC to avoid attribution of its activities to the 501(c)(3) organization.

May a Section 501(c)(3) organization invite a candidate to speak at its events?

Depending upon the facts and circumstances of the event, a Section 501(c)(3) organization may invite a candidate to speak at an event without participating or intervening in a political campaign. However, careful consultation with experienced counsel is recommended prior to inviting candidates to speak at events.

At all events, the organization should ensure that no political fundraising takes place. This could be crucial and should be carefully monitored. At all events, the organization should expressly disclaim the endorsement of any candidate. If the local press misinterprets the candidate’s presence or otherwise indicates the organization may support the individual as a candidate, the organization should consider responding to the newspaper (or other medium) stating it neither supports nor opposes any candidate for public office.

If a candidate is invited to speak at an event sponsored by a Section 501(c)(3) organization or to visit the facilities of the Section 501(c)(3) organization, an important issue is whether the candidate was invited to speak in the capacity of a candidate or as an individual. Candidates may speak at an organization’s event in a non-candidate capacity. For example, a Section 501(c)(3) organization may invite the candidate to speak because the candidate currently holds public office, is considered an expert in a non-political field or is a celebrity. A Section 501(c)(3) organization should exercise extreme care if it invites a candidate to speak in his or her capacity as a public office-holder and that candidate is running for re-election. In this circumstance, the event alone may raise a perception that the organization promotes the candidate’s re-election. If the candidate is invited in an individual capacity, there is no requirement to provide equal access to other candidates. In these circumstances, however, the Section 501(c)(3) organization must take steps to make sure that campaign activity does not occur. Finally, if the candidate is to receive an award or other public recognition, it should be made clear the award is for past recognition of service for non-political causes supported by the Section 501(c)(3) organization.

If a candidate is invited to speak in the capacity of a candidate, additional precautions are in order. For example, the organization should expressly disclaim any endorsement of any candidate in any written materials describing the event. The disclaimer should note the organization does not participate or intervene in any political campaign and neither supports nor opposes any candidate for public office. In addition, when the candidate is introduced, the organization must avoid using any language that could be interpreted as supporting the individual as a candidate. In making this disclaimer, the organization should not comment on the candidate’s qualification for office and is best served not making any mention of the campaign or election.

If a Section 501(c)(3) organization invites one candidate to speak in the capacity of a candidate, it must provide equal access to other candidates. This may be accomplished by inviting all candidates to one event or inviting each candidate to successive events. If an organization invites multiple candidates to speak at one event, like a public forum, it should allow each candidate equal time and opportunity to present his or her views. If questions are prepared for the candidates, it is important for the organization to ensure that they are prepared in a non-partisan fashion. Questions should cover a broad range of issues and should

relate to issues the candidates would affect if elected. Moreover, the forum's moderator should avoid noting approval or disapproval with candidate responses.

If an organization invites multiple candidates to individually speak at successive events, any publicity discussing the events should note the date for all candidates' presentations and mention that the organization randomly established the order of presentations. Also, if an organization plans multiple events, the events must be similar in nature and must afford each candidate an equal opportunity to meet with the organization's members. For example, an organization could not invite one candidate to give the keynote address at its annual awards banquet while inviting another candidate to present at its monthly board meeting. If a candidate declines an organization's invitation to attend an event, the organization should state this in the event's publicity or in the introductory address.

What if a candidate attends a Section 501(c)(3) organization's public function?

Candidates, like other members of the community, may attend functions that are open to the public. A candidate's presence, by itself, does not cause the organization to be engaged in a political campaign intervention. If a candidate appears at a Section 501(c)(3) organization's public event, it is permissible for the organization to recognize his or her attendance if the organization customarily recognizes well-known attendees. It is not permissible, however, to refer to the candidate's candidacy or the upcoming election.

May a Section 501(c)(3) organization allow a candidate to use its mailing lists, facilities or supplies without charge?

In general, no. The prohibition against political activities includes direct and indirect financial support. Accordingly, Section 501(c)(3) organizations may not provide space or mailing lists to a candidate, sponsor a political event, allow a candidate to use supplies of the Section 501(c)(3) organization or permit the organization's name to be used by the candidate to solicit contributions.

May a Section 501(c)(3) organization rent or sell mailing lists, facilities or supplies to a candidate?

In general, yes. The prohibition against political activities includes direct and indirect financial support. Accordingly, as long as a Section 501(c)(3) organization charges the candidate a fair market value for the mailing lists, facilities or supplies, the organization has not provided support to the candidate.

But this question raises complex and fact-specific issues. Ignoring potential unrelated business income issues, it is difficult to determine whether a Section 501(c)(3) organization's business activities with a candidate result in prohibited political campaign activity. Although it best to avoid any use of a Section 501(c)(3) organization's facilities, supplies or mailing lists for political purposes, before engaging in these business activities with candidates, the organization should generally engage in these activities with the community. If an organization accepts paid political advertising for display in its publications or on its website, receives rent for use of its facilities or charges fees for use of its mailing lists or supplies, it should ensure that the amounts charged conform with the organization's ordinary and customary rates.

Further, if an organization provides these goods, services or facilities to one candidate, it must make available the same (or similar) goods, services or facilities to all candidates at similar rates and on an equal basis. Otherwise, certain facts and circumstances could arise where even charging a fair rental value may constitute proscribed intervention in a campaign. For example, if a Section 501(c)(3) organization rented its facilities to one candidate for fair market value, but refused to rent its facilities to the opposing candidate even at fair market value, the IRS could take the position that renting to only one candidate constitutes improper political activities. Finally, if a Section 501(c)(3) organization rents its facilities for fair market value to a single candidate, the IRS could still argue the activity was improper intervention in a political campaign even if the opposing candidate(s) does not request to use the Section 501(c)(3) organization's facilities. The IRS could take the position the Section 501(c)(3) organization was favoring one candidate over another by not making the opposing candidate aware of the possible

rental of the facilities. Accordingly, if a candidate is allowed to use the facilities of a Section 501(c)(3) organization, advice of experienced counsel is strongly recommended.

What about internet activities?

Although an organization cannot control the content of a linked website, it can reduce the risk of political campaign intervention by monitoring the content on those sites and making adjustments to its links when appropriate. While a Section 501(c)(3) organization should carefully monitor content on linked websites, the monitoring requirements of links from that website to others are somewhat reduced. Significant consideration is given to the number of “clicks” separating objectionable content from a Section 501(c)(3) organization’s website.

Moreover, monitoring requirements are reduced when a Section 501(c)(3) organization provides a direct link to an unrelated organization’s website when that link is provided in furtherance of the Section 501(c)(3) organization’s tax-exempt purpose and the offending content is unrelated to that tax-exempt purpose. For example, a Section 501(c)(3) organization may provide direct hyperlinks to candidate websites if it provides links to all candidate websites and such links are provided to educate the public on issues relevant to the organization’s exempt purposes.

In addition, the organization may also wish to adopt and monitor a policy stating its e-mail system may not be used for political campaign purposes.

What are examples of impermissible political activities?

The following activities are examples of impermissible political activities and, accordingly, should be avoided completely:

- Making direct or indirect contributions to a PAC or a candidate's campaign committee (even if otherwise permitted under applicable election laws)
- Reimbursing employees or executives, directly or indirectly, for their contributions to a candidate or their PAC
- Endorsing or opposing, directly or indirectly, a candidate for public office
- Purchasing tickets to political fundraisers or reimbursing employees for their attendance at political fundraisers
- Transferring or loaning funds to another entity, either related or unrelated, then having the entity make a political contribution
- Providing non-financial support to a candidate or their PAC
- Providing space, sponsoring an event or permitting a Section 501(c)(3) organization’s name to be used to solicit contributions
- Providing use of a mailing list to a candidate
- Rating candidates for public office

What are examples of permissible activities?

The following activities are permissible but, nonetheless, should only be entered into with the advice of experienced counsel:

- Conducting programs to educate voters on issues
- Get-out-the-vote efforts
- Inviting candidates to speak at events
- Providing or participating in candidate forums
- Voter registration drives

Although separately these activities may be permissible, Section 501(c)(3) organizations should take special care when engaging in any combination of these activities.

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