

Political Restrictions on Nonprofits- How to Maintain Compliance*
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Nonprofit A, organized to provide music instruction for underprivileged students, distributes an on-line voter guide that presents candidates for an upcoming election in a neutral manner and contains links to the candidates' websites. Nonprofit B, organized to protect local beaches, posts information on its website urging visitors to vote for the candidate who supports environmental issues. Both charities are engaging in political activity, but only B's action would be considered a prohibited intervention that could result in a loss of tax-exempt status.

While nonprofits generally enjoy the privilege of being tax-exempt, it is not without regulation. One particular regulation is the restriction on nonprofits from political campaigning. 501(c)(3) organizations are forbidden from directly or indirectly participating in any political campaign on behalf of (or in opposition to) any candidate for elective public office. Violation of this prohibition could result in the revocation of your organization's tax-exempt status and/or the imposition of excise taxes on your organization. However, in spite of these restrictions, there are certain nonpartisan voter education activities and a limited amount of lobbying that public charity organizations may undertake.

What political activities can a 501(c)(3) nonprofit engage in?

With certain restrictions, 501(c)(3)s may:

- Engage in limited lobbying, including work on ballot measures;
- Conduct nonpartisan public education and training sessions about participation in the political process;
- Educate all of the candidates on public interest issues;
- Publish legislative scorecards;
- Prepare candidate questionnaires and create voter guides;
- Canvass the public on issues;
- Sponsor candidate debates;
- Rent at fair market value mailing lists and facilities to other organizations, legislators, and candidates;
- Conduct nonpartisan get-out-the-vote and voter registration drives;
- Establish a controlled 501(c)(4) organization; and
- Work with all political parties to get its positions included on the party's platform.

The IRS Rule – “Facts & Circumstances” Test

The IRS uses a “facts and circumstances” test to determine whether an organization has violated the prohibition on political campaigning. This means that the IRS will consider all of the facts and circumstances surrounding an activity, such as the organization's other activities and the current political climate, to determine whether the activity violates the prohibition.

Activities that 501(c)(3)s may not engage in include:

- Endorsing candidates for public office;
- Making any campaign contributions;
- Making expenditures on behalf of candidates;
- Restricting rental of their mailing lists and facilities to certain candidates;
- Asking candidates to sign pledges on any issue (tacit endorsement);
- Increasing the volume or amount of incumbent criticism as election time approaches; and
- Publishing or communicating anything that explicitly or implicitly favors or opposes a candidate.

The IRS reviews each on a case-by-case basis and makes its determination based on the actual circumstances to determine whether or not the lobbying can be considered substantial. The IRS determines whether an act(s) is substantial by use of one of two different tests that the nonprofit itself may elect in most cases. Some nonprofits choose the “balancing test” which contemplates a myriad of factors and activities of the nonprofit. Alternatively, the organization may opt out of the balancing test and instead choose to have its finances reviewed. In that case, the IRS will consider a dollar limit that the organization spends on political lobbying activities and determine whether the organization falls within such limit.

Nonprofit organizations should be wary in regards to their participation in political lobbying and other activities. Particular attention should be paid to the IRS rules and regulations so as to avoid timely and costly consequences that would otherwise hinder the nonprofit from accomplishing its benevolent purposes.

IRS Revenue Ruling 2007-41 (<http://www.irs.gov/pub/irs-tege/rr2007-41.pdf>) provides 21 real life examples of what would and would not constitute substantial lobbying or defiance of federal regulation. The IRS also provides an article entitled “Election Year Activities and the Prohibition on Political Campaign Intervention for Section 501(C)(3) Organizations” that is an excellent reference located at <http://www.irs.gov/newsroom/article/0,,id=154712,00.html>.

****This information is intended for general information only. Any individuals or organizations with a legal issue should contact the Public Law Center (PLC) or seek an attorney for legal advice. This article is not meant to substitute the use of legal counsel.***

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