



## IRS Guidelines for Electoral Activities of Nonprofit Organizations

In February 2006, the IRS issued a new fact sheet entitled “Election Year Activities and the Prohibition on Political Campaign Intervention for Section 501(c)(3) Organizations.” The document states that charitable organizations that fall under Section 501(c)(3) of the Internal Revenue Code are “absolutely prohibited from directly or indirectly participating in, or intervening in, any political campaign on behalf of (or in opposition to) any candidate for elective public office.” This prohibition applies to all campaigns, including campaigns at the federal, state and local levels. Not complying with this prohibition may result in loss of tax-exempt status and the imposition of fines. Private foundations that are also 501(c)(3) nonprofit organizations are subject to additional restrictions.

The new IRS guidance was produced because some religious organizations and nonprofit organizations violated their tax-exempt status by endorsing candidates during the 2004 election cycle. Impermissible political campaign intervention occurs when a 501(c)(3) nonprofit organization favors, or is perceived to favor, one candidate or political party over another. The IRS is conducting enhanced education and enforcement of Section 501(c)(3) nonprofit organizations in the 2006 election season. (*Note: References to “nonprofit organizations” in this document refer to 501(c)(3) nonprofit organizations.*)

### **There are many political activities in which nonprofit organizations may engage:**

- Assist citizens to exercise their rights to vote. Organize nonpartisan get-out-the-vote drives so long as they are done in a candidate and party-neutral fashion. Encourage voter registration, participation, and education in non-partisan ways.
- Meet with and educate current elected officials and those seeking elective office.
- Invite political candidates to appear before a nonprofit in their capacity as candidates, so long as equal opportunities are provided for each candidate seeking the same office, political fundraising does not occur in conjunction with the appearance, and neither support for, nor opposition to, any particular candidate is indicated at the event. The organization should cover a broad range of issues in the discussion. Questions should be prepared and presented in a nonpartisan manner.
- Sponsor candidate debates, but they must be convened in a way that does not suggest support for, or opposition to, any candidate or party. If there is a debate, all legally qualified candidates for the same office should be permitted to participate, even if some candidates have virtually no chance of prevailing in the election. However, if one or more candidates decline to participate, the organization can still proceed with the event. It is permissible for the nonprofit to hold sequential sessions when only one individual candidate is asked to address the nonprofit, as long as the likely audiences, types of events, and manner of presentation of the speakers are similar.

- Take positions on public policy issues and lobby on nonpartisan issues to be decided by voters such as ballot measures, initiatives, referenda, charter amendments, bond measures, and constitutional amendments. Nonprofits must avoid any issue advocacy that functions as political campaign intervention. According to the IRS, “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. . . . All the facts and circumstances need to be considered to determine if the advocacy is political campaign intervention.” Accordingly, a nonprofit is permitted to send a message to an elected official, such as “Tell Senator X to vote against Bill 123” but cannot say “Because of Senator X’s vote for Bill 123, we encourage you to vote against him.” While a nonprofit can work to oppose or support a ballot initiative, the law is murkier when the ballot initiative is perceived to be the pet project of someone who is running for office at the same time the ballot initiative appears on the ballot. In such a case, particular care must be taken to avoid the perception that the nonprofit is engaging in political campaign intervention.
- Leaders and staff members of nonprofit organizations may engage in partisan campaigns and support or endorse candidates if done in the capacity as individual citizens. Leaders and staff members should be explicit that they are not representing their organization in any way. Note that senior leaders and those in visible roles should generally avoid campaign-related activities since it may be difficult to establish, if necessary, that they are acting solely as individuals and not on behalf of their organizations.

**Below are activities in which nonprofits organizations may participate, but are likely to receive particularly close scrutiny from the IRS:**

- The distribution of a voter guide or short pamphlet intended to compare candidate positions on a set of issues may violate the prohibition against political campaign intervention, especially if it is released close to an election period. If your organization chooses to distribute a voter guide, each candidate must be portrayed in an equal light and the issues cannot be narrowed in scope. According to the IRS, “preparing or distributing a voter guide may violate the prohibition against political campaign intervention if the guide focuses on a single issue or narrow range of issues, or if the questions are structured to reflect bias. . . . In assessing whether a voter guide is unbiased and nonpartisan, every aspect of the voter guide’s format, content and distribution must be taken into consideration. If the organization’s position on one or more issues is set out in the guide so that it can be compared to the candidates’ positions, the guide will constitute political campaign intervention.”
- Restating from above, senior leaders and those in visible roles should generally avoid campaign related activities since it may be difficult to establish, if necessary, that they are acting solely as individuals and not on behalf of their organizations.
- A candidate may attend a lecture, concert, worship service, or other organizational event open to the public and convened by a nonprofit as a non-candidate, for instance in his or her official capacity as a representative of the office he or she currently holds, as an expert in the field, as a celebrity, or as someone with a distinguished military, legal or public service career. The candidate may not mention the campaign and no campaign activity may occur.

**The following are political activities in which nonprofit organizations may not engage:**

- Endorse or oppose a particular candidate or political party.
- Sell a mailing list, lease office space, or accept paid political advertisements if these goods and/or services are only made available to one candidate, or if they are not made available to the general public with the same opportunity or at equal rates.
- Link the nonprofit's website to a partisan website. Websites fall under the same regulations as printed, oral, or broadcast communications, and the positing or disseminating of candidate information in a biased manner is prohibited. Additionally, a nonprofit has control over whether it establishes a link to another website. If a link connects the nonprofit only to one type of partisan or political content, the nonprofit may be engaging in impermissible political campaign intervention.
- Leaders and staff members of nonprofit organizations are prohibited from engaging in any partisan activity during work hours and from using any of the organization's resources, including phones, faxes, e-mail, mailing lists and meeting space.

It is important to note that a single transgression into political campaign intervention may lead to a costly challenge to an organization's tax exemption and possible loss of that status. In addition, activities that might not threaten an organization's nonprofit status but could suggest to others a partisan preference may be unwise from a community relations perspective. Some organizations have found it helpful to adopt explicit internal policies with regard to political activity, and particularly whether, and under what conditions, certain lay and professional leaders may engage in political activity.

Section 501(c)(3) organizations are encouraged to read the IRS Fact Sheet-2006-17 at <http://www.irs.gov/newsroom/article/0,,id=154712,00.html> and the IRS Publication 1828 entitled "Tax Guide for Churches and Religious Organizations." The second document can be found at <http://www.irs.gov/pub/irs-pdf/p1828.pdf>.

*The information provided herein should not be construed as legal advice. It is strongly recommended that organizations seek legal counsel before participating in election activities.*

LSA thanks United Jewish Communities, for providing analysis on the IRS guidelines. The full memo from UJC can be found on the LSA website, [www.lutheranservices.org](http://www.lutheranservices.org) under "public policy advocacy."

For further information about election year advocacy, please contact Lisa Carr, Director of Public Policy, at [lcarr@lutheranservices.org](mailto:lcarr@lutheranservices.org) or at 202-626-7945.