

Memo

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To: **Federation Executives, Community Relations Council Directors, State Government Affairs Directors, Interested Parties**
From: **William Daroff, VP for Public Policy & Director of the Washington Office**
Stephan Kline, Senior Director for Government Affairs
Amy Aarons, Legislative Associate
Date: **March 31, 2006**
Re: **Election Year Advocacy**

The 2006 mid-term elections provide a great opportunity for Americans to become engaged in the political process. You should know that as charitable organizations that fall under section 501(c)(3) of the Internal Revenue Code, Jewish federations and affiliated organizations 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.” (*Note:* all quotations in this memo are to “IRS Fact Sheet 2006-17.”) Violation of this prohibition may result in the denial or revocation of your tax-exempt status and the imposition of fines.

As leaders of community-based nonprofit organizations, we sometimes encounter situations in which our involvement in public affairs may raise concerns regarding compliance with tax and election laws, as well as the perception of partisanship. While there are many political activities in which nonprofits are prohibited from participating, there are also some in which nonprofits may legally engage. We encourage you to engage in political opportunities in a manner consistent with the information provided in this memorandum for your community to promote policy issues, meet with and educate your current elected officials and those seeking elective office, and ensure that citizens exercise their right to vote.

In late February 2006, the Internal Revenue Service (“IRS”) issued a new fact sheet and regulations (FS-2006-17) entitled “Election Year Activities and the Prohibition on Political Campaign Intervention for Section 501(c)(3) Organizations.”

<http://www.irs.gov/newsroom/article/0,,id=154712,00.html> This new publication was produced because some religious organizations (churches) and nonprofits violated their tax-exempt status by endorsing candidates during the 2004 election cycle. According to the IRS, “of the 82 cases for which examinations have been completed, the IRS found that 59 organizations, or 72%, had engaged in prohibited political interventions and has proposed revocation of tax-exempt status for three of them and 28 cases remain open.” Additionally, as stated by the IRS, “the questionable activities are public and occurred within the compressed period of time of the election cycle. Keeping in mind that there are over one million 501(c)(3) organizations, media reports on the activities of a small representation of those organizations can, rightly or wrongly, create an impression of widespread noncompliance; and the activities that must be evaluated for potential campaign intervention can be difficult to document.” Impermissible political campaign intervention occurs when a nonprofit steps in and favors one candidate or political party over another, or is perceived to do so.

This memo briefly outlines permissible activities in which 501(c)(3) nonprofits may engage during an election year. This memorandum deals solely with those nonprofits that are 501(c)(3)’s. Nonprofits organized under other sections of the Internal Revenue Code may have different guidelines from those that govern their activities. We encourage you to share this memo with your

affiliates and other agencies in your community, but *please note that this memo is not intended to constitute legal advice and an attorney should be contacted as necessary.*

As background, it is important to note that there is a sharp distinction between *legislative* activity and *electoral* activity. Nonprofit organizations are permitted to engage in legislative activity, subject to certain limitation in relation to scope of the organizations' overall activities. Legislative activities include attempting to influence legislation either through direct contacts with legislators and their staffs or attempting to influence the public with respect to legislation. Truly educational activities, designed solely to educate the public on policy issues, are generally not subject to limits and are permissible.

In contrast, nonprofit organizations are strictly prohibited from engaging in electoral activity on behalf of or in opposition to any candidate for public office. Organizations may not rate, endorse, or oppose candidates for public office or engage in any activity that could be interpreted as intervening or participating in an electoral campaign.

Despite this prohibition, there are many political activities in which nonprofits may engage:

- Nonprofits (including synagogues) may encourage voter registration, participation, and education, but cannot engage in any activity that favors or opposes any one candidate (or one political party) for public office;
- Nonprofits may organize nonpartisan get-out-the-vote drives so long as they are done in a candidate- and party-neutral fashion;
- Lay leaders of nonprofits are permitted to speak out about important issues and demonstrate their support for or opposition to particular candidates. If they are endorsing or opposing a candidate for political office, they must do so only as individuals. These leaders must not make partisan comments in official organization publications or at official functions of the organization. If leaders want to speak or write in their individual capacities, they should clearly indicate that their comments are personal and are not intended to represent the views of the organization;
- Professionals employed by nonprofits also may engage in campaign related activities. However, those in senior and/or visible public roles should generally avoid doing so, since it may be difficult to establish, if necessary, that they are acting solely as individuals and not on behalf of their organization;
- Political candidates may be invited 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. If a panel is set-up with each candidate participating, the organization should cover a broad range of issues in the discussion and questions should be prepared and presented in a nonpartisan manner. Nonprofits may sponsor candidate debates, but they must be convened in a way that does not suggest support 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 candidate 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 event, and manner of presentation of the speakers are similar;

- 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;
- Nonprofit organizations may take positions on public policy issues and may 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.
- Special consideration must be used when nonprofit organizations make any statement about candidates for public office, even if a particular candidate makes a blatantly anti-Semitic remark. While organizations that would normally speak out about such a comment may continue to do so, they must be careful to avoid any reference to the candidacy or election. So for instance they can say: “We condemn Representative Y’s abhorrent statement that seeks to divide our community.” They should not say, “we condemn Representative Y who is running for reelection this November;” or “make sure you punish Representative Y at the ballot box this November.”

Below you will find 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;”

- Questions arise around whether a business activity conducted by a nonprofit organization constitutes participation or intervention into a political campaign. This includes the selling of a mailing list, leasing of office space, or the acceptance of 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; and,
- 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.

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 policies that specify their rules with regard to political activity, and particularly whether and under what conditions certain lay and professional leaders may engage in political activity.

If you have any questions or concerns about this document, please feel free to contact Stephan Kline, Senior Director for Government Affairs at 202.736.5864 or stephan.kline@ujc.org or Amy Aarons, Legislative Associate, at 202.736.5871 or amy.aarons@ujc.org. Further information can be found at <http://www.irs.gov/newsroom/article/0,,id=154712,00.html>.
