

Notes for:
An informal guide to active
election year citizenship by
tax-exempt public benefit and
other non-partisan community service
organizations.

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ADVOCACY AND LOBBYING

1. General Issue Advocacy

There is no limit on the amount of time, effort, or expense “tax-exempt” organizations may work on general political issues such as government benefit programs, civil rights, economic justice, and the environment. 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.

2. Influencing Legislation (Lobbying)

In general, no 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. An 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

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

Court cases and many legal advisors have identified 5% as the general rule. The IRS has also noted that where 16 to 20% of total activities have been devoted to lobbying, those activities have been considered “substantial”.

b. Lobbying During Election Years

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

NONPARTISAN ANALYSIS

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. However, it may advocate a particular position or viewpoint so long as there is sufficiently full and fair presentation of the facts to enable the public to form an opinion independently.

THREE SIMPLE RULES

IRS regulations on the political activities can be summarized in three rules:

1. Without limits on time, effort and expense, organizations may work publicly on moral and political issues by advocating positions in the media and to elected officials; and to the general public, and working in local coalitions or partnerships organization can also perform activities to educate and register voters if they are done in a non-partisan manner.
2. Within narrow limits on time, effort, and expense, organization 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. 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 advocates for or against candidates for public office or political parties. This includes fundraising and donating meeting space. Election-related activities such as candidate questionnaires and forums are acceptable so long as all major candidates are invited to participate.

Please Note:

The restrictions against partisanship described here apply only to an organization, as a legal entity, or to a person or group speaking in its name. Members may freely make partisan statements as individuals. 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.

POLITICAL (ELECTORAL) ACTIVITIES

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

Certain activities or expenditures may not be prohibited depending on the circumstances. For example, certain voter education activities (including the presentation of public forums and the publication of voter 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: Prohibited Activities

- a. Endorsements
- b. Financial Contributions
- c. In-kind contributions (business activity)
 - 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 candidates;

2. Inviting a Candidate to Speak

Depending on the facts and circumstances an 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. Public Forum

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 does not engage in prohibited political campaign activity, make sure that:

- all candidates (or at least all major candidates) are invited to participate;
- 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.
- Comments or questions from the moderator do not imply approval or disapproval of any or all the candidates.

b. Speaking as a Non-Candidate

Political candidates can be invited to speak in a non-candidate capacity. For instance, a political candidate may be a public figure because he or she:

1. Currently holds, or formerly held, public office;
2. Is considered an expert in a non-political field;
3. Is a celebrity; or
4. 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 to provide equal access to all political candidates. However, the organization must ensure.

- the individual speaks only in a non-candidate capacity;
- Neither the individual nor any representative 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

Questionnaires should be sent to all candidates. 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 no-biased manner. For this reason, using the candidate's complete responses to questions and polls is suggested.

4. Voter's 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 education voters. They may not be used to favor or oppose candidates for public elected office.

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

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 not 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 congregation. 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 suggest posting a sign with a statement similar to this:

“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.”

REFERENCES

For Additional Information:

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

Internal Revenue Service
<http://www.irs.gov>

Tax Guide for Churches and Religious Organizations. Publication 1828 (Rev. 7-2002) <http://www.irs.gov/pub/irs-pdf/p1828.pdf>

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) <http://www.irs.gov/pub/irs-tege/topic-p.pdf>

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