



Rules of the Road in an Election Year

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IRS Political Activity Compliance Initiative of 501(c)(3) nonprofit organizations

- During the 2004 election year, 132 cases of alleged political interventions by 501(c)(3) nonprofits were referred to the IRS
 - *22 cases were found groundless and closed immediately*
 - *28 cases still remain open*
 - *82 cases have been examined and completed, of which the IRS found that 59 organizations (72%) had engaged in prohibited political interventions. The IRS has proposed revocation of tax-exempt status for three of them and the others have received advisory warnings*



IRS Political Activity Compliance Initiative of 501(c)(3) nonprofit organizations

- In February 2006, the IRS launched an initiative to improve compliance through both education and enforcement.
- Educational Fact Sheet
- New, detailed procedures for handling cases to prevent recurring violations of political intervention.
- What's the net-net?
 - *Increased scrutiny*
 - *No legal changes*

Elections, Ballot Initiatives & Lobbying – What’s What??



501(c)(3)s & Electioneering

- 501(c)(3)s are absolutely prohibited from supporting or opposing candidates for public office.
- Other allowable activities in an election – covered later.

Ballot Initiatives & Referenda

- Proposed statutory changes or constitutional amendments put on election ballots for public vote.
- Not Electioneering – prohibition applies only to work “for or against candidates for public office.”
- Is Lobbying – passing laws.
- 501(c)(3)s can lobby.

Two Forms of Lobbying

- **Direct Lobbying**

- when an organization attempts to influence specific legislation by stating its position to a legislator or other government employee who participates in the formulation of legislation, through its staff or members.

Two Forms of Lobbying

- **Grassroots lobbying**

- When an organization urges the general public to take action on specific legislation.

- Key elements of grassroots lobbying:

- Refer to specific legislation;

- Reflect or state a point of view on the legislation's merits; and

- Encourage the general public to contact legislators.

Is Work on a Ballot Initiative Direct or Grassroots Lobbying??

A decorative graphic element consisting of a thin orange line that curves from the left side of the slide towards the center, and a larger, solid brown shape that curves from the center towards the bottom right corner.

Ballot Initiative Work is Direct Lobbying

- Public becomes the legislature.
- Lobbying the public to vote for or against a legislative/constitutional measure.
- Important because (c)(3)s can spend more on direct lobbying.

How much can a 501(c)(3) spend on lobbying?

- **A generous amount:**
 - 20 percent of the first \$500,000 of annual expenditures;
 - 15 percent of the next \$500,000;
 - 10 percent of the next \$500,000;
 - 5 percent for every additional \$500,000 up to \$1 million.
- **ABC nonprofit with expenditures of \$50,000.**

Grassroots Lobbying Expenditures Limited

- Charitable nonprofits may spend 25% of their total allowable lobbying expenditures on grassroots lobbying.
- **ABC nonprofit with expenditures of \$50,000.**
 - 20% of \$50,000 = \$10,000 = Overall lobbying limit
 - 25% of \$10,000 = \$2,500 = Grassroots lobbying limit
 - Total lobbying activity \$2,500 on grassroots lobbying, and \$7,500 on direct lobbying or all \$10,000 on direct lobbying.

Only 501(h) Electors

These expenditure limits and lobbying definitions only apply to (c)(3)s that take the (h) election.

Easy to do!

If not an (h) elector, lobbying cannot be a “substantial part” of your activities.

Substantial not defined. No set expenditure limits or definitions.

Commons Myths & Misperceptions

- If we receive government funding, we cannot lobby at all.
- We cannot use foundation funds for lobbying.
- We cannot lobby a candidate for public office during an election season.

More Latitude for (c)(4)s and 527s

- (c)(4)s

- No restrictions or limitations on lobbying.
- Can work on behalf of candidates (support or oppose) but only secondary activity.
- Contributions are not tax deductible.

- 527s

- Sole focus on candidate campaigns.
- Only work on ballot initiative if clear nexus b/n it and candidate's prospects for election.
- Funds must come from traditional political sources (donations, dues, etc)
- Contributions not tax deductible.

Check State Laws

- State Election Laws.
- State Tax Laws – especially on ballot measure activities.

Have additional questions?

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Political Activities of Section 501(c)(3) Organizations



Basic Rule

Section 501(c)(3) organizations may engage in educational activities related to the electoral process as long as they do not:

- participate or intervene
- in any political campaign
- in support of, or in opposition to, any candidate for public office



Permissible Educational Activities

- Voter guides/candidate questionnaires
- Candidate forums
- Officeholder scorecards
- Voter registration
- Issue education



Voter Guides/Candidate Questionnaires

- All candidates asked to participate
- All responses published, unedited
- No indication of preference
 - Editorial opinion
 - Comparison to organization's positions
- Variety of issues



Officeholder Scorecards

- Voting records of politicians
- No indication of preference
- Variety of issues
- Method and timing of distribution relevant



Candidate Forums

- All candidates invited
- Range of issues addressed
- Equal opportunity to respond
- No indication of preference
 - Editorial comments



Voter Registration/Get-Out-The-Vote

- Must be nonpartisan
- Not directed at voters likely to support a particular candidate



Issue Education

- A 501(c)(3) does not lose its ability to engage in educational activities simply because a political campaign is in process
- In fact, it is during the election season that the interest of voters in key issues may be at its highest



Some Helpful Factors for Issue Education During a Campaign

- A history of non-electoral issue education
- Research showing the need for education
- Disclaimers of endorsements
- No reference to a candidate



Examples of Prohibited Political Conduct

- Endorsement of a candidate
 - fundraising appeals
- Rating of candidates
- Contributions to candidates
- Distribution of materials prepared by candidates
- Establishment of a PAC



Other Issues

- Penalties for engaging in prohibited political conduct
- Relevance of election laws



Questions?