

Election Involvement by Section 501(c)(3) Organizations (including Churches)

Our session today is about the prohibition on political campaign activity by organizations recognized as section 501(c)(3) tax-exempt organizations, including churches. Let's start by talking about the specific language in the code that gives rise to the prohibition. The gist of the provision was added by amendment during the Senate floor debate over the Revenue Act of 1954. This amendment was proposed by Texas Senator Lyndon B. Johnson, who was then the Senate minority leader. The provision was accepted and became part of the code. There's no legislative history explaining Senator Johnson's reasons for proposing the amendment, but nonetheless, the provision has been in the code for over half a century now. And to the extent Congress has revisited it over the years, it has in fact strengthened it. Most recently, in 1987, Congress amended the language to clarify that the prohibition also applies to statements opposing candidates.

So the current language applicable to section 501(c)(3) organizations reads, ..."[an organization] which does not participate in or intervene in, including the publishing or distributing of statements, any political campaign

on behalf of or in opposition to any candidate for public office.” Note that the prohibition includes publishing and *distributing* statements – so the distribution by a section 501(c)(3) organization of biased material prepared by a third party could jeopardize the organization’s tax-exempt status.

An important point to remember is that the prohibition applies to intervention in political campaigns, and not all activity that might be described as “political.” For example, section 501(c)(3) organizations may engage in a limited amount of lobbying activity, which is defined as the attempt to influence legislation. There are other rules that govern lobbying activities by section 501(c)(3) organizations, however, we won’t have time to get into those today.

Let me stress here that the prohibition applies to section 501(c)(3) organizations as a condition for exemption. It’s not directed just at churches or any other particular type of organization, and it’s not a freedom of speech or free exercise of religion issue. It is a requirement imposed by Congress for the privilege of being exempt from federal income tax under this specific sub-section of the Code.

The Code does not contain a “bright line test” as to what constitutes political campaign intervention. So the IRS considers all the “facts and circumstances” of a particular situation, striving to interpret and apply the laws enacted by Congress, regulations written by the Treasury Department and decisions reached by the courts.

To illustrate the facts and circumstances test, I’ll discuss several scenarios from Fact Sheet 2006-17, which the IRS released this past February, although I won’t be covering all of the examples from the fact sheet. The fact sheet was distributed to you prior to this forum. You can also download the fact sheet from the EO page of the IRS website. That’s www.irs.gov/eo, and the fact sheet number is 2006-17.

First, understand that the prohibition on political campaign intervention extends beyond simple candidate endorsements or contributions to political campaign funds. Those acts are clearly campaign intervention, as are written or verbal public statements made by or on behalf of an organization in favor of or in opposition to any candidate for public office. The scenarios I will be discussing involve the tougher calls where all of the facts and

circumstances must be considered to determine whether the organization has intervened in a political campaign.

Let's look first at activities some organizations engage in to encourage people to participate in the electoral process by educating voters, registering voters, or encouraging higher voter turnout at the polls. These kinds of activities can be legitimate, permissible activities of a section 501(c)(3) organization if they are carried out in a non-biased manner.

So, in Example 1 of the fact sheet, an organization established to promote community involvement sets up a booth at the state fair where citizens can register to vote. The signs and banners in and around the booth give only the name of the organization, the date of the next upcoming statewide election, and notice of the opportunity to register. No reference to any candidate or political party is made by the volunteers staffing the booth or in the materials available at the booth, other than the official voter registration forms which allow registrants to select a party affiliation. Under these circumstances, the organization is not engaged in political campaign

intervention when it operates its voter registration booth. This is an example of a situation where an organization can be involved in the election process without violating the prohibition.

Contrast that situation with Example 2 from the fact sheet dealing with an organization that educates the public on environmental issues. A candidate for the state legislature is challenging the environmental policies of the incumbent as an important element of her platform. Shortly before the election, the organization sets up a telephone bank to call registered voters in the district in which the candidate is seeking election. In the phone conversations, the organization's representative discusses the importance of environmental issues, asking questions about the voter's views on these issues. If the voter appears to agree with the incumbent's position, the organization's representative thanks the voter and ends the call. If, on the other hand, the voter appears to agree with the challenger's position, the organization's representative reminds the voter about the upcoming election, stresses the importance of voting in the election and offers to provide transportation to the polls. Even though the organization's representative never makes an express endorsement of any candidate during the calls to the voters, the organization has intervened in the

campaign on behalf of the challenger through the manner in which it conducted its get-out-the-vote drive.

Next, we will look at activity by the leaders of an organization. The question is, when is the leader speaking only for him or herself as an individual on political matters, – which he or she can certainly do – and when are his or her statements attributable to the organization, and therefore political campaign intervention? After all, an organization acts through its individual members.

Consider Example 4 from the fact sheet. A section 501(c)(3) university publishes a monthly newsletter that is distributed to all alumni of the university. In each issue, the president of the university has a column titled “My Views.” The month before an election, the president states in the “My Views” column, “It is my personal opinion that Candidate U should be reelected.” For that one issue, the president uses his personal funds to pay the portion of the cost of the newsletter attributable to the “My Views” column. Even though he paid part of the cost of the newsletter, the newsletter is an official publication of the university so the remarks by the

president are attributable to the university and constitute campaign intervention by the university.

How about appearances by candidates at exempt organizations' functions?

Depending on the facts and circumstances, an organization may invite political candidates to speak at its events without jeopardizing its tax-exempt status, but the factors to be considered are based on the capacity in which the candidate appears. Political candidates may be invited in their capacity as candidates, or in their individual capacities.

Candidates may also appear without an invitation at organization events that are open to the public.

A candidate may seek to reassure the organization that it is permissible for the organization to do certain things in connection with the candidate's appearance. An organization in this position should keep in mind that the candidate may not be familiar with the organization's tax-exempt status and that the candidate may be focused on compliance with the election laws that apply to the candidate's campaign rather than the federal tax law that applies to the organization. The organization will be in the best position to ensure compliance with the prohibition on political campaign intervention if

it makes its own independent conclusion about its compliance with federal tax law.

When a candidate speaks at an organization's event as a political candidate, the organization must take steps to ensure that:

- It provides an equal opportunity to other political candidates seeking the same office;
- It does not indicate any support for or opposition to any candidate. This should be stated explicitly when the candidate is introduced and in communications concerning the candidate's attendance); and
- No political fundraising occurs.

In determining whether candidates are given an equal opportunity to participate, an organization should consider the nature of the event to which each candidate is invited, in addition to the manner of presentation. For example, an organization that invites one candidate to speak at its well attended annual banquet, but invites the opposing candidate to speak at a sparsely attended general meeting, will likely have violated the political campaign prohibition, even if the manner of presentation for both speakers is otherwise neutral.

Candidates may also appear or speak at organization events in a non-candidate capacity. For instance, a political candidate may be a public figure who is invited to speak because he or she

- currently holds, or formerly held, public office;
- is considered an expert in a non political field;
- is a celebrity or has led a distinguished military, legal, or public service career.

A candidate may also choose to attend an event that is open to the public, such as a lecture, concert or worship service. The candidate's presence at an organization-sponsored event does not, by itself, cause the organization to be engaged in political campaign intervention. For example, the IRS has never taken the position that candidates can not attend church services while running for office. However, if the candidate is publicly recognized by the organization, or if the candidate is invited to speak, the organization must ensure that:

- The individual is chosen to speak solely for reasons other than candidacy for public office;
- The individual speaks only in a non-candidate capacity;

- Neither the individual nor any representative of the organization makes any mention of his or her candidacy or the election;
- No campaign activity occurs in connection with the candidate's attendance; and
- The organization maintains a nonpartisan atmosphere on the premises or at the event where the candidate is present.

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.

Illustrating this is Example 10 from the fact sheet. A section 501(c)(3) historical society is located in the state capital where state officials occasionally come to its meetings and the president of the society customarily acknowledges their presence. During the state gubernatorial race, the Lieutenant Governor, who is also running for Governor, attends a meeting of the historical society where the president acknowledges the Lieutenant Governor's presence in his customary manner, saying, "We are happy to have joining us this evening Lieutenant Governor Y." The

president makes no reference in his welcome to the Lieutenant Governor's candidacy or the election. The historical society has not intervened in a political campaign due to the president's acknowledgement.

The last topic from the fact sheet that I want to cover is one of the most difficult issues: the difference between issue advocacy and political campaign intervention. Under federal tax law, section 501(c)(3) organizations may take positions on public policy issues, including issues that divide candidates in an election for public office. However, section 501(c)(3) organizations must avoid any issue advocacy that functions as political campaign intervention. 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. A statement can identify a candidate not only by stating the candidate's name but also by other means such as showing a picture of the candidate, referring to political party affiliations, or other distinctive features of a candidate's platform or biography. All the facts and circumstances need to be considered to determine if the advocacy is political campaign intervention.

For our last scenario, consider Example 16 from the fact sheet: There are two candidates for the state senate in a district where the issue of state funding for a new mass transit project in the district is a prominent issue in the campaign. Both candidates have spoken out on the issue. One candidate supports the new mass transit project, whereas the other opposes the project and supports more funding for highway improvements instead. At the annual fundraising dinner of a section 501(c)(3) organization that promotes community development, which takes place in that district the month before the election, the executive director gives a lengthy speech about community development issues including the transportation issues. He does not mention the name of any candidate or any political party. However, at the conclusion of the speech, he makes the following statement, "For those of you who care about quality of life in our district and the growing traffic congestion, there is a very important choice coming up next month. We need new mass transit. More highway funding will not make a difference. You have the power to relieve the congestion and improve your quality of life in our district. Use that power when you go to the polls and cast your vote in the election for your state senator."

The organization has violated the prohibition on political campaign intervention as a result of its executive director's remarks. This is so because the act occurred at its official function shortly before the election, its executive director referred to the upcoming election after stating a position on an issue, and the issue is a prominent one that distinguishes the candidates.

I encourage you to review Fact Sheet 2006-17 after this forum, both the examples I just covered and the rest. In addition, I recommend you look at Publication 1828, Tax Guide for Churches and Other Religious Organizations.