



Public Law Bulletin

POLITICAL AND LOBBYING ACTIVITIES AND 501(C)(3) ORGANIZATIONS

Political activities and legislative activities are two different things and are subject to two different sets of rules. The rules depend on:

1. the type of tax-exempt organization,
2. the type of activity (political or legislative) at issue,
3. the scope or amount of the activity conducted, and
4. the consequences of exceeding the given set of limitations.

Lobbying Activity

In general, no organization may qualify for section 501(c)(3) status if a substantial part of its activities is attempting to influence legislation (commonly known as lobbying). **A 501(c)(3) organization may engage in some lobbying, but too much lobbying activity risks loss of tax-exempt status.**

Legislation **includes** action by:

1. Congress, any state legislature, any local council, or similar governing body, with respect to **acts, bills, resolutions, or similar items** (such as legislative confirmation of appointive office),
2. or by the public in **referendum, ballot initiative, constitutional amendment, or similar procedure.**

It does **not include** actions by executive,

judicial, or administrative bodies, i.e. rule making.

An organization will be regarded as attempting to influence legislation if:

1. 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
2. if the organization **advocates the adoption or rejection of legislation.**

Organizations may, however, involve themselves in issues of public policy without the activity being considered as lobbying. For example, organizations may conduct **educational meetings, prepare and distribute educational materials, or otherwise consider public policy issues in an educational manner without jeopardizing their tax-exempt status.**

Measuring Lobbying Activity: Substantial Part Test

Whether an organization's attempts to influence legislation constitute a substantial part of its overall activities is determined on the basis of all the pertinent facts and circumstances in each case. The IRS considers a variety of factors, **including the time devoted (by both compensated and volunteer workers) and the expenditures devoted by the organization to the activity**, when determining whether the lobbying activity is substantial.

Measuring Lobbying Activity: Expenditure Test

Organizations other than churches and private foundations may **elect the expenditure test under section 501(h) as an alternative method for measuring lobbying activity.** Under the expenditure test, the extent of an organization's lobbying activity will not jeopardize its tax-exempt status, provided its expenditures, related to such activity, do not normally exceed an amount specified in section 4911. This limit is generally based upon the size of the organization and may not exceed \$1,000,000.

Political Campaign Activity

Under the Internal Revenue Code, all section 501(c)(3) 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. Contributions to political campaign funds or public statements of position (verbal or written) made on behalf of the organization in favor of or in opposition to any candidate for public office clearly violate the prohibition against political campaign activity.

Certain activities or expenditures may not be prohibited depending on the facts and circumstances. For example, certain voter education activities (including the presentation of public forums and the publication of voter education guides) conducted in a non-partisan manner do

not constitute prohibited political campaign activity.

In addition, other activities intended to encourage people to participate in the electoral process, such as voter registration and get-out-the-vote drives, would not constitute prohibited political campaign activity if conducted in a non-partisan manner. On the other hand, voter education or registration activities with evidence of bias that: (a) would favor one candidate over another; (b) oppose a candidate in some manner; or (c) have the effect of favoring a candidate or group of candidates, will constitute prohibited participation or intervention.

Individual Activity by Organization Leaders

The political campaign activity prohibition is not intended to restrict free expression on political matters by leaders of organizations speaking for themselves, as individuals. Nor are leaders prohibited from speaking about important issues of public policy. However, for their organizations to remain tax-exempt under section 501(c)(3), **leaders cannot make partisan comments in official organization publications or at official functions.**

To avoid potential attribution of their comments outside of organization functions and publications, organization leaders who speak or write in their individual capacity are encouraged to clearly indicate that their comments are personal and not intended to represent the views of the organization.

Inviting a Candidate to Speak

Depending on the facts and circumstances, an organization may invite political candidates to speak at its events without jeopardizing its tax-exempt status. Political candidates may be invited in their capacity as candidates, or individually (not as a candidate).

Speaking as a Candidate

When a candidate is invited to speak at an organization event as a political candidate, the organization must take steps to ensure that:

1. it provides an equal

opportunity to the political candidates seeking the same office,

2. 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
3. no political fundraising occurs.

Equal Opportunity to Participate

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 be found to have violated the political campaign prohibition, even if the manner of presentation for both speakers is otherwise neutral.

Depending on the facts and circumstances, an organization may invite political candidates to speak at its events without jeopardizing its tax-exempt status. Political candidates may be invited in their capacity as candidates, or individually (not as a candidate).

Public Forum

Sometimes an organization invites several candidates to speak at a public forum. A public forum involving several candidates for public office may qualify as an exempt educational activity. However, if the forum is operated to show a bias for or against any candidate, then the forum would be a prohibited campaign activity, as it would be considered intervention or participation in a political campaign.

When an organization invites several candidates to speak at a forum, it should consider the following factors:

1. whether questions for the candidate are prepared and presented by an independent

nonpartisan panel,

2. whether 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,
3. whether each candidate is given an equal opportunity to present his or her views on the issues discussed,
4. whether the candidates are asked to agree or disagree with positions, agendas, platforms or statements of the organization, and
5. whether a moderator comments on the questions or otherwise implies approval or disapproval of the candidates.

Speaking as a Non-Candidate:

An organization may invite political candidates to speak in a non-candidate capacity. For instance, a political candidate may be a public figure because he or she: (a) currently holds, or formerly held, public office; (b) is considered an expert in a non-political field; or (c) is a celebrity or 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 for the organization to provide equal access to all political candidates.

However, the organization must ensure that:

1. the individual speaks only in a non-candidate capacity,
2. neither the individual nor any representative of the organization makes any mention of his or her candidacy or the election, and
3. 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.

Additional Information

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