



# Mixing Politics with Nonprofits

## How to Engage Politically Without Violating IRS Regulations

by Kathryn M. Vanden Berk

In 1954, Congress imposed a requirement on all 501(c)(3) exempt organizations that they not engage in partisan political activity. Of course, this doesn't mean that you cannot speak. But it does mean that you cannot campaign.

This strikes me as fair. We receive a tremendous public benefit with our tax exemption and with the fact that people who donate to us can deduct their contributions from taxable income. Since political contributions are not deductible, there would be no way for the IRS to track the proper or improper use of donated funds if 501(c)(3) organizations were involved in partisan politics. However, the penalty is severe for not complying, and there is no middle ground. If you do engage in politics, you lose your exemption.

Nevertheless, there are ways for you to engage in the political life of your local communities, states, and national races without running askance of this prohibition. You simply need to know the rules and abide by them.

**How to lose your exemption.** The rules began to blur in the early 1990s, when religiously based groups became politically active. Two religious organizations actually

lost their exemption because the egregiousness of their conduct.

Four days before the 1992 presidential election, The Church at Pierce Creek in Binghamton, New York took out an ad in two national newspapers urging Christians not to vote for Bill Clinton because of his positions on certain issues. This was the

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first time in IRS history where a bona fide church's tax-exempt status was revoked because of its involvement in politics.<sup>1</sup>

Two days before the same election, Pat Robertson's Christian Coalition distributed 40 million distinctly partisan "voter guides" by inserting them in the service bulletins of Christian churches nationwide. The leaflets used highly inflammatory language to insinuate that Democratic candidates for Congress were "unchristian," and they were

credited with changing the outcome in several elections.<sup>2</sup>

Because of who these entities are, the public's awareness of political activity within the exempt sector has focused on religious organizations. But the proscriptions apply equally well to all organizations with a 501(c)(3) exemption. These and other more recent cases provide us now, in 2006, with clearer guidelines than we had in the 1990s. With the upcoming Congressional races later this year, this is a good time to review what is and is not allowed in the way of political involvement.

**Acceptable limits for lobbying, none for politicking.** Despite the prohibition against politicking, you may engage in certain public policy and election-related work with-

out jeopardizing your exempt status. There are restrictions on certain kinds of political actions, of course, but the range of what is acceptable is wide enough to give you many opportunities for action without crossing any legal lines.

IRS regulations on the political activities of 501(c)(3) entities can be summarized in three simple rules:

1. You can educate the public about political issues and encourage voters to vote.

You may issue position papers to the media and work with local coalitions or partnerships on issues of public importance. You can educate and register voters—so long as you do this in a non-partisan manner.

2. You may engage in a limited amount of lobbying. Lobbying is defined as advocating for or against specific pieces of legislation. Your lobbying activities must be an “unsubstantial” portion of your overall activities. The IRS has not provided a guideline for exactly what is “unsubstantial,” but experts generally agree that up to 5 percent is acceptable.<sup>3</sup> If you wish to engage at a higher degree of lobbying, you may file an election to be judged on an expenditure basis.<sup>4</sup> Grassroots lobbying activities are an acceptable way to engage in public debate, so long as they remain an “unsubstantial” part of your overall activities.
3. You may not engage in partisan political activity. You can do nothing that advocates for or against specific candidates for public office or their political parties. This includes fundraising on behalf of candidates and donating meeting space, among other things. Election-related activities such as candidate questionnaires and forums are acceptable, so long as all major candidates are invited to participate and they are fair in their presentation.

**Important notes.** First, keep in mind that the restrictions against political activity apply only to the 501(c)(3) organization as a legal entity and those who speak in its name. An officer or director may freely make partisan statements as an individual, so long as the speaker makes it clear that he/she is *not* speaking on behalf of the organization.

Second, the political activity prohibition applies only to 501(c)(3) entities. If you feel that advocacy is important enough to do so, you may incorporate a separate nonprofit and get it recognized as a 501(c)(4) social welfare/advocacy organization. Donations to it are *not* tax deductible. Be sure to keep good records so you can demonstrate to the IRS that there is no illegal crossover between the two entities.

Third, because recent high visibility cases were triggered by the political actions of religious organizations, many of the best guides have been published by and for that sector. I especially recommend a publica-

tion issued by the Pew Charitable Trust.<sup>5</sup> It is a concise and clearly written document that is equally applicable to all exempt organizations.

**Voting guides.** A guide focusing on issues of interest to your agency can be useful to voters who want to know which candidate is most likely to favor issues of importance

to you. Until now, there has been little guidance as to what constitutes acceptable limits for voter guides, other than that a truly partisan guide may expose your organization to loss of its exemption.

The best description of how to create an acceptable voter guide has ironically come out of the Christian Coalition case.<sup>6</sup> Since the IRS forced the Coalition to describe its

## BEST PRACTICES

### Follow these steps to prepare a nonpartisan voter guide:

- Develop candidate surveys that include a broad range of issues using questions that do not, in content or structure, evidence a bias or preference with respect to the views of any candidate or group of candidates.
- Ask questions in a clear, complete, and unbiased manner.
- Use surveys or questionnaires consistently within candidate groups. For example, House of Representatives candidates may have different candidate surveys from Senatorial candidates, but the surveys used in either case should be the same for all members of that body.
- Require questions to be answered with either “support,” “oppose,” or “undecided” (or “yes,” “no,” or “undecided”) and afford candidates an opportunity to provide additional comment of up to 25 words on the subject of the question. Do not edit or alter candidate statements except to remove profane or scandalous words.
- Allow no less than 21 days for the candidates to respond.
- Display no fewer than five or six questions asked of the candidate.
- Use the same words in the voter guide questions as were used in the survey.
- Place responses adjacent to the questions or display them on the same page in a manner that clearly relates the responses to the questions.
- If permitted under applicable election law, include the candidates’ Web site addresses.
- Distribute printed voter guides no later than the two weeks before the election to which they apply, and post them on your Web site on or before that date.
- If a candidate does not respond, note that no response was provided and attempt to fairly determine the candidate’s position on each issue based upon his/her stump speeches, newspaper articles, campaign literature, published positions, Web site, and legislative votes on the issues. Note clearly that the reported positions were determined from sources other than the candidate’s survey responses, state that your sources are available upon request, and display them on your Web site. If you cannot clearly or reasonably determine the candidate’s position on an issue, reflect the position as “unknown” or “unclear.”

intended process for issuing voter guides as a condition of being reinstated as an exempt entity, that approved process gives us excellent guidance in preparing our own voter guides.

**Candidate forums.** Candidate appearances are, of course, partisan by their very nature. However, if you invite all major candidates to speak, you may hold public forums without violating IRS rules. I was sensitized to the need for fairness some 25 years ago, when a trade association I represented had invited only one candidate to speak at its annual convention. A powerful member of the opposition party happened to be present, and he heatedly noted to the embarrassed conferees that politicians “don’t get mad, they get even.” The opposing candidate was flown in the next day in a private jet at great expense to the organization.

I had an extremely fortuitous experience

with candidate forums when I was the executive director of Sunburst Inc. of Wisconsin. Our advisory board at Sunburst Youth Homes invited both candidates to meet with its members, our staff, and members of the community. Only one candidate showed up, so we listened to his presentation with no fear that we had done anything wrong. When that candidate won the election, I paid a visit to him in the State Capitol on our association’s annual lobbying day. I was warmly received and we had a good talk. That is exactly what you want to have happen.

**Conclusion.** IRS requirements about political activities are reasonable. While they absolutely prohibit campaign involvement and partisan politics, they provide a number of accepted ways for you to become active in the public debate. I hope that you will find within this article the means to make your voice heard in the political marketplace.



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**Endnotes**

- 1 The ad cited Biblical passages and concluded with the question: “How then can we vote for Bill Clinton?” It included the following notice: “This advertisement was co-sponsored by The Church at Pierce Creek, Daniel J. Little, Senior Pastor, and by churches and concerned Christians nationwide. Tax-deductible donations for this advertisement gladly accepted. Make donations to: The Church at Pierce Creek.” When the IRS revoked the church’s exemption, it appealed claiming that revocation of its tax-exempt status violated section 501(c)(3), the First Amendment, and the Religious Freedom Restoration Act. The Court of Appeals affirmed the decision on every count. *Branch Ministries v. Rossotti*, 341 U.S. App. D.C. 166 (2000).
- 2 The voting guides listed seven issues for Congressional candidates, indicating whether the candidate was for or against them. The candidates were not asked for their opinions, nor were the sources of the Coalition’s information identified. The issues were the hot button issues of the day and were simplistically described. For example, the candidate’s position on “Tax-Funded Obscene Art” was apparently based on whether or not he/she voted to fund the National Endowment for the Arts. The IRS concluded in 1999 that the Christian Coalition was not entitled to tax-exempt status, but was rather a political ally of the Republican Party.
- 3 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.
- 4 You file Form 5768, and are allowed to report actual under the “expenditure test” provided under Section 501(h) of the Internal Revenue Code. The penalties for engaging in excessive lobbying are substantial and include a 25 percent excise tax and/or loss of exempt status.
- 5 The booklet, called “Politics and the Pulpit: A Guide to the Internal Revenue Code Restrictions on the Political Activity of Religious Organizations,” was authored by Deirdre Dessingue, associate general counsel of the U.S. Conference of Catholic Bishops and a leading expert on exempt organization taxation. You can download it at <http://pewtrusts.org/pubs/>.
- 6 After the Coalition lost its exemption, it re-applied for tax exemption under Section 501(c)(4) of the Code as an advocacy group. Because exemption applications are public records, Tax Analysts Exempt Organizations Magazine quoted verbatim the Coalition’s Form 1024 application information about how it will henceforth prepare voting guides.

DO'S & DON'TS OF POLITICAL ACTIVITY

**Taking Action on Issues**

- Do publicly comment and educate the general public and elected officials on key issues of importance to your organization.
- Do advocate for or against specific public policies by speaking out on decisions by government agencies, executives, or courts.
- Do call, write, and meet with elected officials to support or oppose specific pieces of legislation.
- Do sponsor and distribute nonpartisan voter guides (see “Best Practices” sidebar).

**Activity During Elections**

- Do conduct nonpartisan voter registration drives.
- Do encourage members of your boards, staff, and others in the community to vote.
- Do hold candidate forums by inviting all legally qualified candidates for office to discuss relevant issues.

- Do educate candidates on the issues important to your organization and encourage them to adopt a sympathetic position.

**Engaging in Partisan Activities**

- Do not endorse or oppose candidates for public office.
- Do not advise members of your staff or the public at large, directly or indirectly, to vote for or against specific candidates or political parties.
- Do not make financial contributions to candidates.
- Do not collect money on behalf of, or provide in-kind services, to a candidate.
- Do not create political action committees.
- Do not distribute or display campaign literature or partisan voter guides.