



The Jewish Federations
OF NORTH AMERICA

Memo

To: Federation Executives, Community Relations Council Directors, Government Affairs Directors, Interested Parties

From: William Daroff, Senior VP for Public Policy & Director of the Washington Office
Steven Woolf, Senior Tax Policy Counsel

Date: January 27, 2016

Re: Election Year Advocacy

IRS Guidance on Election Activities

In the summer of 2007, the IRS issued Revenue Ruling 2007-41, which provides guidelines on the scope of the prohibition against campaign activities by Section 501(c)(3) tax-exempt organizations. The ruling sets out 21 factual situations involving 501(c)(3) organizations and activities that constitute “prohibited campaign intervention.” The full ruling can be found at: <http://www.irs.gov/pub/irs-drop/rr-07-41.pdf>

The IRS continues to focus on connections between 501(c)(3)s and other tax-exempt entities that **are not public charities such as** 501(c)(4)s, and 527s (Political Action Committees) in relation to shared resources and websites. There is a fine line between what is permissible and what is not under the law, and Federations must be careful when sharing resources and websites with related non-501(c)(3) organizations. During the past several years, officials at the IRS, especially those within the Exempt Organization Division, have been trapped in a maelstrom regarding their interpretations regarding the permissible political activity of 501(c)(4) social welfare organizations. Because of the heightened attention paid to the political activities of all types of tax-exempt organizations, Federations and affiliated agencies would be well advised to be extra diligent regarding election-related activities this election year.

Legislative, Educational, and Electoral Activity

An important distinction should be made between *legislative* activity and *electoral* activity. Charities are *permitted* to engage in legislative activity, subject to certain limitation in relation to scope of the organizations' overall activities. Legislative activities include attempting to influence legislation (lobbying) either through direct contacts with legislators and their staffs or attempting to influence the public with respect to legislation. Truly educational activities, designed solely to educate the public on policy issues, are generally not subject to limits and are permissible. In contrast, charities are strictly *prohibited* from engaging in electoral activity on behalf of or in opposition to any candidate for public office. Organizations may not rate, endorse, or oppose candidates for public office or engage in any activity that could be interpreted as intervening or participating in an electoral campaign. Despite this prohibition, there are many political activities in which nonprofits may engage, described below. Also see the IRS Examples listed on page 6.

Voter registration, education and get-out-the-vote drives

- Charities (including synagogues) may encourage voter registration, participation, and education, but cannot engage in any activity that favors or opposes any one candidate or political party for public office;
- Charities may organize nonpartisan get-out-the-vote drives so long as they are done in a candidate-and party-neutral fashion;

Activities by individuals (lay leaders and professionals) (See also Organizations, Officials, and Outsiders on page 4 below)

- Lay leaders of charities are permitted to speak out about important issues and demonstrate their support for or opposition to particular candidates. If they are endorsing or opposing a candidate for political office, they must do so only as individuals. These leaders must not make partisan comments in official organization publications or at official functions of the organization. If leaders want to speak or write in their individual capacities, they should clearly indicate that their comments are personal and are not intended to represent the views of the organization;
- Professionals employed by charities acting in their individual capacity also may engage in campaign related activities. However, those in senior and/or visible public roles may wish to avoid doing so, as it may be difficult to establish, if necessary, that they are acting solely as individuals and not on behalf of their organization;

Appearances by candidates and party representatives

- Political candidates may be invited to appear before a charity in their capacity as candidates or in a debate, so long as **equal opportunities** are provided for each candidate seeking the same office, political fundraising does not occur in conjunction with the appearance, and neither support for nor opposition to any particular candidate is indicated at the event. If a panel is set-up with each candidate participating, the organization should cover a broad range of issues in the discussion and questions should be prepared and presented in a nonpartisan manner.
- If there is a debate, all legally qualified candidates for the same office should be permitted to participate, even if some candidates have virtually no chance of prevailing in the election. However, if one or more candidate decline to participate, the organization can still proceed with the event. It is permissible for the nonprofit to hold sequential sessions when only one individual candidate is asked to address the nonprofit, as long as the likely audiences, types of event, and manner of presentation of the speakers are similar;
- On occasions, charities may wish to invite representatives of political parties to make presentations or have information booths available at the organization's facility or meeting. Although the activities of representatives of political parties can be interpreted as prohibited political activity on behalf of candidates for public office that can threaten the tax-exempt status of the organization, such activities would be permissible if equal opportunities are provided to representatives from all political parties to attend such events.
- A candidate may attend a lecture, concert, worship service, or other organizational event open to the public and convened by a charity as a non-candidate, for instance in his or her official capacity as a representative of the office he or she currently holds, as an expert in the field, as a celebrity, or as someone with a distinguished military, legal or public service career. The candidate may not mention the campaign and no campaign activity may occur.

Issue Advocacy

- Charities may take positions on public policy issues and may lobby on nonpartisan issues to be decided by voters such as ballot measures, initiatives, referenda, charter amendments, bond measures, and constitutional amendments. Such organizations should avoid any issue advocacy that functions as the equivalent of political campaign intervention. According to the IRS, “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. . . . All the facts and circumstances need to be considered to determine if the advocacy is political campaign intervention.”
 - Accordingly, a nonprofit is *permitted* to send a message, such as “Tell Senator X to vote against Bill 123” but *cannot* say “Because of Senator X’s vote for Bill 123, we encourage you

to vote against him.” While a charity can work to oppose or support a ballot initiative, the law is murkier when the ballot initiative is perceived to be the pet project of someone who is running for office at the same time the ballot initiative appears on the ballot. Such involvement should be either avoided or done after consultation with experts.

- Special consideration must be used when charities issue public statements regarding candidates for public office, even if a particular candidate makes a blatantly anti-Semitic remark. While organizations that would normally speak out about such a comment may continue to do so, they must be careful to avoid any reference to the candidacy or election. For example, it may be *permissible* to say: “We condemn Representative Y’s abhorrent statement that seeks to divide our community.” Organizations *should not say*, “we condemn Representative Y who is running for reelection this November;”

Voter guides and business activity

- The distribution of a voter guide or short pamphlet intended to compare candidate positions on a set of issues may violate the prohibition against political campaign intervention, especially if it is released close to an election period. If a charity chooses to distribute a voter guide, each candidate should be portrayed in an equal light and the issues cannot be narrowed in scope. According to the IRS, “preparing or distributing a voter guide may violate the prohibition against political campaign intervention if the guide focuses on a single issue or narrow range of issues, or if the questions are structured to reflect bias. . . . In assessing whether a voter guide is unbiased and nonpartisan, every aspect of the voter guide’s format, content and distribution must be taken into consideration. If the organization’s position on one or more issues is set out in the guide so that it can be compared to the candidates’ positions, the guide will constitute political campaign intervention.”

Connections with Non-exempt Organizations

Federations should be cautious sharing resources or connecting with non-exempt organizations that might be engaging in political activity. Sharing resources and producing similar web content could cause a charity to lose tax-exempt status under certain circumstances. Shared resources, including office space, phone lines, staff, and supplies can be problematic if the non-exempt organization engages in activities prohibited to exempt organizations, particularly in relation to political or campaign activities. For example, if a charity establishes a related 501(c)(4) or 527 Political Action Committee, or shares its resources with one for no cost, it may be in jeopardy of losing its 501(c)(3) status even if separate financial accounts are maintained. The IRS has also recently ruled that shared web pages of 501(c)(3) and related 501(c)(4) organizations that contain candidate endorsement materials will be considered to be prohibited intervention in a political campaign. Individuals and executives within the Federations or other charities are allowed to create, lead, or participate in political groups, political activities, or other political or lobbying groups. However, these individuals are not allowed to use their organizations and resources of the Federation or charity in any way to further the goals of such non-charitable organization.

In addition, **websites with links to other websites should be evaluated carefully.** If a charity provides links to campaign websites, candidate biographies, other non-exempt organizations that engage in political or election activity, or other electoral material, and if this material or opportunity is not available equally for all candidates in a non-biased manner, the exempt organization could lose its status as tax-exempt. This is not to say that a Federation cannot post information about elections, voter registration materials, and equal information about all candidates (without making an endorsement). However, election material should be for purely education and non-partisan purposes.

Organizations, Officials, and Outsiders

As noted above, the absolute prohibition on political campaign activity (i.e. endorsing or opposing candidates for public office) applies to section 501(c)(3) charitable organizations, such as Federations, and not individuals (including employees, board members, trustees and others) who act in their private capacity. However, because organizations, by definition, act through individuals, it may be possible for the political activity of individuals to be attributed to the organization. If organization officials (including directors and

trustees) engage in political activity *at organization functions or through organization publications*, the IRS can attribute such actions to the organization.

Organization officials can be involved in a political campaign, so long as they clearly and unambiguously indicate their actions are their own, as an individual, *and not a representative of the organization*. They can even be identified as an organization official so long as it is clear they are acting in their individual capacity, and not on behalf of the organization. For example, if an official endorses a candidate *somewhere other than in the organization's publications or at its official functions*, and the organization is mentioned, it should be made clear that the endorsement is made in his or her private capacity and not on the organization's behalf. A disclaimer such as the following would be appropriate: "Organization shown for identification purposes only; no endorsement by the organization is implied."

Other individuals, including employees and outside speakers, can have their actions of attributed to organizations if the action is authorized by the organization, such as in an employment context. Acts of "outside" individuals (including invited speakers) may be attributed to the charity if the organization explicitly or implicitly ratifies the individual's actions or statements. In some cases, failure to disavow the actions or statements of such individuals may constitute ratification. To be effective, the disavowal must be made in a timely manner equal to the original actions. The organization must also take steps to ensure that such unauthorized actions do not recur.

Federations should be especially vigilant during the campaign season to monitor potential political actions and statements of authorized individuals as well as outside speakers. We recommend that language similar to the following be provided to speakers who might make political statements at Federation events:

"The Federation, like all organizations that are tax-exempt under Internal Revenue Code Section 501(c)(3), is absolutely prohibited from supporting or opposing candidates for elected public office. As such, it is important that to the extent that your presentation could be interpreted to support or oppose any candidate or political party, it is important that you state that such views are your own or those of your organization and not those of the Federation. The Federation does not take positions supporting or opposing candidates for public office."

IRS Examples

Example: Chairman D is the chairman of the Board of Directors of M, a section 501(c)(3) organization that educates the public on conservation issues. During a regular meeting of M shortly before the election, Chairman D spoke on a number of issues, including the importance of voting in the upcoming election, and concluded by stating, "It is important that you all do your duty in the election and vote for Candidate W." Because Chairman D's remarks indicating support for Candidate W were made during an official organization meeting, they **constitute political campaign intervention** by M.

Example: Minister C is the minister of Church L, a section 501(c)(3) organization and Minister C is well known in the community. Three weeks before the election, he attends a press conference at Candidate V's campaign headquarters and states that Candidate V should be reelected. Minister C does not say he is speaking on behalf of Church L. His endorsement is reported on the front page of the local newspaper and he is identified in the article as the minister of Church L. Because Minister C did not make the endorsement at an official church function, in an official church publication or otherwise use the church's assets, and did not state that he was speaking as a representative of Church L, his actions **do not constitute campaign intervention** by Church L.

Example: President E is the president of Society N, a historical society that is a section 501(c)(3) organization. In the month prior to the election, President E invites the three Congressional candidates for the district in which Society N is located to address the members, one each at a regular meeting held on three successive weeks. Each candidate is given an equal opportunity to address and field questions on a wide variety of topics from the members. Society N's publicity announcing the dates for each of the candidate's

speeches and President E's introduction of each candidate include no comments on their qualifications or any indication of a preference for any candidate. Society N's actions do **not constitute political campaign intervention**.

Example: M, a section 501(c)(3) organization, maintains a web site and posts an unbiased, nonpartisan voter guide. For each candidate covered in the voter guide, M includes a link to that candidate's official campaign web site. The links to the candidate web sites are presented on a consistent neutral basis for each candidate, with text saying "For more information on Candidate X, you may consult [URL]." M **has not intervened in a political campaign** because the links are provided for the exempt purpose of educating voters and are presented in a neutral, unbiased manner that includes all candidates for a particular office.

Summary

It is important to note that a single transgression into political campaign intervention may lead to a costly challenge to an organization's tax exemption and possible loss of that status. Further, if an organization engages in more than one type of activity, the interaction among the activities may affect the determination of whether or not the organization is engaged in political campaign intervention. In addition, activities that might not threaten an organization's nonprofit status but could suggest a partisan preference may be unwise from a community relations perspective. Some organizations have found it helpful to adopt policies that specify their rules with regard to political activity, and particularly whether and under what conditions certain lay and professional leaders may engage in political activity.