

POLITICAL ACTIVITY BY NON-PROFITS

*Rules and Tools to Help Your
Organization Participate in the
Political Process*

NH Center for Nonprofits

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Presentation Overview

- Focus on 501(c)(3) because of unique risks and increased scrutiny by Congress and IRS
- Brief attention to other (501(c)(4)) organizations that are permitted more latitude
- Provide specific real world examples
- Identify information resources

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Setting the Stage

“I’m seeing dozens of separate problems united by a single theme. The theme is some individuals are exploiting vagueness or silence in or a lack of enforcement of the laws governing tax-exempt groups to enrich themselves rather than serve the public.”

– Senator Charles Grassley (R-IA), June 1, 2006

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Setting the Stage

“The political contests, especially for president, are starting earlier than usual. The IRS, as it has in the past, wants to remind charities and churches of the ban on political campaign activity. We also want to urge nonprofit and religious organizations to review the guidance we have issued to help them avoid any problems.”

Steven T. Miller, IRS Commissioner of Tax Exempt and Government Entities Division, November 19, 2007

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Setting the Stage – IRS Scrutiny

- IRS Political Activity Compliance Initiative (PACI):
 - Began in 2004 and continues today
 - Guidance, publicity, accelerated case initiation and outreach
- Approximately 150 cases in 2004 initiative (churches and non-churches)

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Setting the Stage – IRS Scrutiny

- IRS found improper intervention in political campaigns in 72% of organizations
- Violations noted:
 - Support of candidates
 - Statements during church services
 - Candidate appearances
 - Improper guides or ratings
 - Signs

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Setting the Stage – The Future

- IRS issued a Revenue Ruling on political activities in 2007
- IRS will continue initiative begun in 2004 and may impose harsher penalties
- Congress is considering changes in the law

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Rules

- Internal Revenue Code – § 501(c)(3)
- Tax Regulations
- IRS Rulings and Announcements
- Rules for Other Non-Profit Organizations
- Court Cases
- Non-Tax Rules

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Section 501(c)(3)

A non-profit may “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.”

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Treas. Reg. § 1.501(c)(3)- 1(c)(3)(iii)

- Who is a candidate?
 - An individual
 - Contestant for elective public office at federal, state or local level
- Prohibited “Participation” includes:
 - Publication or distribution of written or printed statements
 - Oral statements

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IRS Rulings and Announcements

- 2002 IRS Training Manual
- 2007 Revenue Ruling

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DON'T GET THIS WRONG!

- Absolute ban on political activity by 501(c)(3) organizations
- Different from lobbying rules for 501(c)(3)s, which have a “no substantial part” test and a safe harbor

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Other Non-Profit Organizations

- “Social Welfare” Organizations (501(c)(4))
 - May engage in political activities but not as primary purpose
 - No charitable deduction for contributions
 - Similar rules for unions and business leagues
- May establish 527 organizations to engage in political activity

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Audit and Penalties

- Facts and circumstances test
- Excise taxes (“Intermediate Sanctions”)
- Loss of tax-exempt status

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Non-Tax Rules

- Federal Election Commission rules govern candidates and campaign contributions
- Corporations, including non-profits, may not contribute to a campaign
- Hosting candidates, forums or debates the main areas of concern

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Tools

- Hosting a Candidate
- Debates/Forums
- Voter Guides
- Voter Registration
- GOTV
- Educational Activities

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DON'T

- Contribute cash to a candidate
- Endorse a candidate
- Lend employees to work on a campaign
- Provide facilities for use by a candidate

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Hosting a Candidate

- Must be non-partisan and fair
- Invite all the candidates
- Treat all candidates the same (e.g., similar audiences)
- May invite candidates in non-candidate capacity (but not too close to election)

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Debates/Forums

- Must be neutral and fair (unbiased moderator and audience)
- Invite all the (viable) candidates
- Treat all candidates the same (e.g., equal time)
- Cover broad range of issues

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Voter Guides

- AREA OF PARTICULAR CONCERN/SCRUTINY BY THE IRS
- Must be non-partisan and fair (don't "rate" candidates)
- Treat all candidates equally (same amount of space and formatting)
- Use candidates' own words where possible

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Candidate Questionnaires

- ALSO RISKY
- Distribute to all candidates
- Use candidates' own words

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Voter Registration

- PUBLIC CHARITIES ONLY (not private foundations)
- Must be non-partisan and fair

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GOTV

- Must be non-partisan
- Treat all candidates/parties the same

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Educational Activities

- Allowed on a non-partisan basis
- Issue advocacy allowed as long as it does not result in support of or opposition to a candidate (recent Supreme Court case)
- Be careful with web links to candidate or other political sites

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Applying the Rules to the Tools

- Real world examples – both hypothetical and actual cases
- Guidance clear in some areas, less so in others

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Candidate Appearances

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Example 1

President of Historical Society

- Three Congressional Candidates are invited to speak at three different meetings
- Each candidate speaks and fields questions
- Publicity and introduction do not include comments on their qualification or Presidents preference

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Example 2

Same Historical Society

- Facts are same as prior screen
- Rather than three candidates there are four
- One candidate declines to speak
- Publicity and opening statement includes announcement that the order of speakers was chosen at random and fourth candidate declined invitation to speak

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Example 3

Minister of Church

- Minister invites Senate Candidate to preach at worship service
- Candidates remarks include “I am asking not only for your votes, but for your enthusiasm and dedication, for your willingness to go the extra mile to get a very large turnout on Tuesday”
- No other candidates have been invited to speak

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Candidate Appearances Where Speaking or Participating as a Non-Candidate

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Example 4

Historical Society

- The President of the Society customarily acknowledges the presence of any public officials present at meetings
- A Candidate attends just prior to an election
- The President acknowledges him by saying “We are happy to have joining us this evening Lieutenant Governor Smith” without any mention of his candidacy.

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Example 5

Chairman of Hospital Board

- The Hospital is building a new wing
- The Chairman invites local Congressman to the groundbreaking ceremony.
- Neither the Chairman nor the Congressman makes mention of the candidacy or election

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Example 6

University

- The University regularly publishes an alumni newsletter
- Alumni are invited to send in updates about themselves for the publication
- Alumnus Smith sends in an update on himself
- The newsletter prints: “Alumnus Smith class of 1980 is running for Mayor of Boston
- This is the only place in the newsletter that the candidacy is mentioned

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Example 7

Symphony Concert

- The mayor attends a concert performed by the Symphony
- The concert is free and open to the public
- The concert takes place after the primary but before the general election
- The Chairman of the Symphony addresses the crowd with comment “I am pleased to see the Mayor here tonight. Without his support, these free concerts would not be possible. We will need his help if we want these concerts to continue next year so please support the Mayor in November.”

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Business Activity

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Example 8

Museum

- Owns historic building used for functions
- Hall is available for rent to the public on first come first serve basis
- Standards fees are set according to attendance
- Candidate Smith rents hall for fundraiser and pays standard fee

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Example 9

Theater

- Maintains a mailing list of subscribers and contributors
- Has never rented out this list to a third party
- Candidate Smith supports the arts and would like to rent the mailing list
- Theater obliges but declines requests from other candidates

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Voter Registration and Get Out the Vote Drives

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Example 10

Community Involvement Organization

- Booth at Hopkinton Fair to register voters
- Information available — name of organization, information about registering, date of election
- No candidate or political party information

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Example 11

Environmental Education Organization

- Political candidate running for State Legislature is challenging environmental policies of incumbent
- Organization sets up phone bank to call registered voters
- Caller asks voter of views on environmental issues
- If the voter agrees with incumbent, call ends
- If they agree with candidate the caller reminds voter of upcoming election and offers transportation

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Issue Advocacy vs. Political Campaign Intervention

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Example 12

University

- The University prepares and finances a full page ad that is published in several large newspapers shortly before an election
- Senator Smith is running for re-election
- The University is supporting a bill that would provide more opportunities for residents to attend college however the Senator has opposed it in the past
- The ad states: “Call or write Senator Smith to tell him to vote for S. 24”

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Example 13

Public Education Advocacy Organization

- Prepares and funds a radio ad urging an increase in state funding for Public Education which airs shortly before election
- Ad is not part of regularly scheduled radio spots
- Ad cites statistics indicating that Public Education is under-funded however, no legislative activity is scheduled
- Does not cite Governor's position on subject, however it does say "Tell Governor Smith what you think about our under-funded schools"
- Opponent has made "under-funded schools" a campaign issue by focusing on Governor's veto of income tax increase to fund public education

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Example 14

Community Development Organization

- The issue of funding for a new mass transit project is a prominent issue in a State Senate race
- One candidate supports funding, the other does not
- The CEO of the Organization speaks at the annual fundraising dinner just prior to the election
- Makes comment “For those of you who care about quality of life and the growing traffic congestion, there is a very important choice coming up next month. We need new mass transit. You have the power to relieve the congestion and improve your quality of life. Use that power when you go to the polls and cast your vote in the election for your state senator.”

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Web Sites

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Example 15

Voter Guide Website

- Posts unbiased, nonpartisan voter guide that is consistent with IRS Guidance
- Provides a link to each candidate's website that is covered in the voter guide
- Links are presented in a consistent, neutral way

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Example 16

Hospital Website

- Maintains website that includes Hospital info, health and research programs and outreach
- On pages describing particular diseases there are links to other websites for further info
- One link directs you to a national newspaper which has published an article on a certain disease
- Page in newspaper contains no reference or direct links to any candidates
- Elsewhere on the newspaper's website are editorials endorsing candidates

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Example 17

Church Website

- Website includes bios of ministers, times of services, details of outreach programs and activities of it's members
- Candidate Smith is a member of the church
- Shortly before the election the website posts: “Lend your support to Candidate Smith your fellow parishioner, in Tuesday’s election.”

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Individual Activity by Organization Leaders

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Example 18

CEO of Hospital

- CEO endorses candidate
- Candidate publishes and pays for full page ad with CEO's name and position listed under endorsements, along with disclaimer "Titles and affiliations of each individual are provided for identification purposes only"

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Example 19

President of UNH

- UNH has monthly Alumni Newsletter
- President of UNH has “My Views” column
- President states in column “It is my personal opinion that Candidate Smith should be re-elected”
- That month President pays for his column’s portion of newsletter

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Example 20

Minister of Church

- Minister attends press conference of candidate and states that candidate should be re-elected
- Minister does not state which church he is affiliated with
- Newspaper includes ministers name and church in article

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Example 21

Chairman of Board

- Organization educates public on conservation issues
- At a board meeting, chairman speaks on a number of issues including responsibility to vote
- Concludes meeting with “It is important that you all do your duty in the election and vote for Candidate Smith”

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Other Resources

- IRS (www.irs.gov/charities/index.html)
- FEC (www.fec.gov)
- NH Center for Nonprofits
- National Organizations, such as Alliance for Justice
- Law and Accounting Firms

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Thank You!

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