

# Political Activity: A Primer for Nonprofits

What kind of politicking can you do, and what's not allowed? Here's a helpful summary.

By Mary Ann Hofmann



A Presidential election year is a good time for tax-exempt nonprofit organizations to review the rules regarding political activity. In recent years, the IRS has increased its scrutiny of nonprofits that become involved in politicking. Violation of federal tax laws can result in the assessment of excise taxes and, in extreme cases, revocation of tax-exempt status. On the other hand, there are many types of political activity that nonprofits are free to participate in. It's essential that nonprofit managers understand what's permitted and what's prohibited, and how to avoid trouble in this area.

First, it's important to note that the IRS recognizes three broad types of political activity—campaign activity, lobbying, and general advocacy. The IRS enforces different rules for each.

Next, remember that there are three basic types of nonprofits that are affected by the ban on political activity—charities, non-charitable nonprofits, and political nonprofits. In this article, the term “charities” includes all nonprofit organizations that qualify for tax exemption under IRC Sec. 501(c)(3). These are the

Be sure you have a written policy relating to political activities.

only nonprofits eligible to receive tax-deductible contributions.

Figure 1 summarizes the three types of political activities and indicates which are permitted or prohibited for each of the three types of nonprofits. Since the tax laws limiting political activity are strictest for charities, we'll discuss these organizations first. We'll explain the rules for the other types of nonprofits later in the article.

## Political Campaign Activity by Charities

Political campaign activity includes any attempt to influence opinion about candidates or to affect the outcome of an election for public office. Congress first enacted a ban on political campaign activity by charities and churches in 1954. This prohibition shouldn't be seen as an attempt by the government to squelch the free speech of religious or other nonprofit organizations but, rather, as a way to prevent taxpayers from channeling nondeductible political contributions through nonprofit organizations in order to

transform them into tax-deductible charitable contributions.

Charities aren't allowed to participate or intervene in any political campaign on behalf of or in opposition to any candidate for any elective public office, at the national, state or local level.<sup>1</sup> Included under this prohibition are activities such as the following:

- Endorse or oppose a candidate for public office or make any communication which advocates for or against a candidate's election to public office.
- Contribute funds to a candidate, campaign, or political action committee (PAC).
- Make expenditures on behalf of a candidate, provide services to a candidate or campaign, or allow organizational resources to be used indirectly for political campaign purposes.
- Display political campaign signs on the organization's property.
- Distribute partisan campaign literature.
- Ask a candidate to sign a pledge or other promise to support a particular issue.

Prohibited communication regard-

The IRS has increased its scrutiny.

**Electronic forums may expose your organization to risk.**

ing a candidate or an election campaign includes oral statements, written communication, statements posted on your organization’s Web site, or something on an outside Web site that can be reached by a link from your Web site. Even inappropriate political statements that show up on your social media page or similar electronic forum may expose your organization to some risk.

Executives and board members are allowed to express personal opinions regarding political candidates and issues, but they must be careful not to do so through official organization publications or at official organization functions. When speaking or writing in their individual capacity, managers should always preface their comments with a disclaimer that their views are personal and not intended to represent the organization’s views.

There’s a danger that employees or volunteers who use organizational facilities or supplies for political purposes may appear to be acting on the organization’s behalf. Be sure you have policies in place to prevent such activities. If an unauthorized use of organizational resources does occur, communicate formal disapproval and disclaim responsibility.

Nonprofits are allowed to invite candidates to speak under a variety of circumstances without violating

the ban on political involvement, as long as campaign activities (including fundraising) don’t occur and the organization doesn’t imply any support of or opposition to the candidate. If you engage speakers as experts on a particular topic, for example, and not in their capacity as candidates for office, any communications announcing the event or the speakers shouldn’t mention their candidacies or the upcoming election. The same is true if you invite candidates (who happen to be running for re-election) to speak in their capacities as elected officials.

If you ask someone to speak as a candidate, you must offer equal time to all other candidates for that office. Likewise, if you ask a candidate to participate in a forum or debate, you must invite all candidates, and be sure the forum is conducted in an unbiased manner.

**Ramifications of Campaign Activity by Charities**

When it participates in prohibited political activity, a charity jeopardizes both its tax-exempt status and its ability to receive tax-deductible contributions. The IRS may assess an excise tax equal to 10% of political expenditures. Failure to correct the situation promptly by recovering the funds spent, if possible, and putting policies in place to prevent future such expenditures, will expose the organization to an additional tax equal to 100% of the prohibited political expenditures. Furthermore, a tax of 2½% of political expenditures may be assessed on charity executives who knowingly agree to making

political expenditures, and a 50% tax if they don’t correct the situation.<sup>2</sup>

Charities can’t afford to flaunt the laws regarding political campaign involvement. During each election cycle, the IRS’s Political Activity Compliance Initiative investigates allegations of political campaign activity by 501(c)(3) organizations, issues written advisories, and occasionally revokes an offending organization’s tax-exempt status.

The IRS hears about transgressions from many sources: Anyone can fill out Form 13909 to complain about an exempt organization. In 2004, the most recent year for which statistics are available, the IRS selected 110 cases for examination, wrote 69 advisories, and revoked the tax-exempt status of five organizations.<sup>3</sup>

**Avoiding the Pitfalls of Political Campaign Activity**

By taking a few basic precautions, charities can avoid running afoul of the laws banning political involvement:

- Educate yourself and others in your organization about political campaigning laws.
- Create a written policy regarding political activities. Ensure that employees, board members, and volunteers understand that policy. (You can download a sample Lobbying and Political Activity Policy from BoardSource at [www.boardsource.org](http://www.boardsource.org).)
- Establish controls that will prevent improper political expenditures or inappropriate use of organizational resources.

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**Figure 1: What’s Permitted & What’s Prohibited**

	<b>Section 501(c)(3) Charities</b>	<b>Section 501(c)(4), (5), (6) Non-charitable Nonprofits</b>	<b>Section 527 Political Organization</b>
<b>Political Campaign Activities (attempting to influence an election)</b>	Strictly prohibited	Cannot be a “primary” activity; all expenditures are subject to tax	Permitted without limitation
<b>Lobbying (attempting to influence legislation)</b>	Cannot be a “substantial part” of the organization’s activities	Permitted, as long as it relates to the tax-exempt purpose of the organization; must notify dues-paying members as to non-deductibility of dues or pay “proxy” tax on lobbying expenditures	Cannot be a “substantial part” of the organization’s activities
<b>General Advocacy (attempting to influence public opinion on issues)</b>	Permitted, as long as it furthers the tax-exempt mission of the organization, and is non-partisan in nature	Not limited, as long as it relates to the tax-exempt purpose of the organization	Cannot be a “substantial part” of the organization’s activities

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- Be sure your publications and Web site are monitored by someone trained to recognize improper campaign-related statements.
- Focus on your core mission, which can't include influencing the outcome of political elections.

### Lobbying

The IRS defines lobbying as attempting to influence legislation at the federal, state, or local level. Legislation includes actions by law-making bodies on acts, bills, resolutions, and legislative confirmation of appointed offices, as well as actions by the public in referendums, ballot initiatives, constitutional amendments, and the like. An organization is attempting to influence legislation if it contacts, or urges the public to contact, members of a legislative body for the purpose of proposing, supporting, or opposing legislation.

To qualify for tax-exemption, a charity can't engage in lobbying as a "substantial" part of its activities. Some nonprofits (but not churches) may elect to measure substantiality as a percentage of total expenditures. These organizations may spend up to 20% of their budget on lobbying without incurring any penalties. This percentage limit decreases as the size of the organization increases. In all cases, total allowable lobbying is capped at one million dollars.

If a charity exceeds the lobbying threshold, there's a 25% tax on the excess expenditures. In addition, a 5% tax can be assessed against managers who knowingly agreed to the disallowed expenditures. If the organization exceeds the limit for lobbying activity for four consecutive years, it may lose its tax-exempt status.

### General Advocacy & Voter Education

Political activity termed "general advocacy" by the IRS includes attempts to influence public opinion on issues or encourage voter participation. It can also include attempts to influence non-legislative members of government, such as regulators.

While the tax code prohibits campaigning on behalf of or in opposition to any *candidate* for public of-

Discussion of issues cannot include names or descriptions of candidates.

fice, it does allow advocacy for or against *issues* that are in the political arena, such as abortion, health-care, or the environment.

Charities may express positions on public policy issues, even those that divide candidates for public office. Care must be taken, however, not to cross the line from issue advocacy to campaign intervention. Discussion of issues cannot include names or descriptions of candidates or their parties, platforms, or biographies. The IRS may decide that a charity has engaged in political campaign intervention under the guise of issue advocacy if support for or opposition to a particular candidate is even indirectly implied.

Charities are free to participate in general voter education activities, including the hosting of public forums and the publication of voter education guides, as long as they are non-partisan. Activities intended to encourage people to participate in the electoral process, such as voter registration and get-out-the-vote drives, are acceptable if conducted in an unbiased manner.

### Non-charitable Nonprofits

Because they don't receive tax-deductible contributions, non-charitable nonprofit organizations are governed by somewhat different rules regarding political activity. Sec. 501(c)(4) social welfare organizations, 501(c)(5) labor and agricultural organizations, and 501(c)(6) business leagues are permitted to engage in a limited amount of political campaigning as long as it's not the organization's primary activity. Furthermore, these nonprofits face no limits on lobbying or general advocacy, as long as such activities relate to their tax-exempt purpose.

Even though political activity won't jeopardize the tax-exempt status of the non-charitable nonprofit, there are still tax consequences:

- Non-charitable nonprofits are subject to tax on the money they spend towards political campaign activities.
- When non-charitable nonprofits engage in lobbying expenditures, they may be subject to the “proxy” tax. Dues-paying members of these organizations frequently deduct their dues as business or employment-related expenses. They’re only allowed to do so, however, to the extent not used by the nonprofit for lobbying activities. Non-charitable nonprofits that receive dues must therefore notify their members of the non-deductible portion of the dues. Otherwise, the organization must pay a tax on its lobbying expenditures, levied at the highest corporate tax rate.

### Political Nonprofits

Political parties, political action committees, and other campaign or election-related political organizations may be tax-exempt under Sec. 527. The exempt purpose of these organizations is attempting to influence elections. Thus, they may engage in unlimited political campaign activity. However, they can’t make substantial expenditures for lobbying or general advocacy activities.

### A Planning Strategy

Nonprofits that wish to engage in political activities can take advantage of the differences in tax rules for different types of tax-exempt organizations by creating multiple entities. For example, a charity can establish and control a non-charitable Sec. 501(c)(4) organization to conduct lobbying. The two groups must be separately incorporated, have separate finances, and keep records adequate to show that tax-deductible contributions aren’t being used to pay for lobbying. The non-charitable nonprofit may then establish a political action committee (or

other Sec. 527 entity), either as a separate organization, or as a separate segregated fund, to engage in political campaign activity.<sup>4</sup>

If you decide to embark on this strategy:

- Take care to keep all transactions between the affiliated entities at arm’s length.
- Avoid using any resources of the organization to support the political activities of the other entity.
- Because of the complexity of this arrangement, be sure to consult an attorney before adopting this plan. ■

### Footnotes

<sup>1</sup>Internal Revenue Code Section 501(c)(3) provides the basic prohibition against political campaign activity. Treasury Regulation Section 1.501(c)(3)-1(c)(3) further elaborates on what constitutes political campaign activity. Revenue Ruling 2007-41 is the source for most of the specific advice regarding charities and political campaign activities; it includes a number of examples illustrating how the law is applied in various situations.

<sup>2</sup>Internal Revenue Code Section 4955.

<sup>3</sup>IRS, Final Report, 2004 Political Activity Compliance Initiative, accessed at [http://www.irs.gov/pub/irs-tege/final\\_paci\\_report.pdf](http://www.irs.gov/pub/irs-tege/final_paci_report.pdf).

<sup>4</sup>Branch Ministries v. Commissioner, 211 F3d 137. See also Thomas Ward, and Judith Kindell, “Affiliations among Political, Lobbying, and Educational Organizations,” 2000 IRS Exempt Organization CPE Text, accessed at <http://www.irs.gov/pub/irs-tege/eotopies00.pdf>.



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### Resources for Further Information

This article only summarizes the major provisions of the tax laws regarding nonprofits and political activities. Nonprofit leaders are encouraged to educate themselves further on this issue.

- **The IRS** has a wealth of information available on the topic, most of which is accessible from its Web site ([www.irs.gov/charities](http://www.irs.gov/charities)) under the heading “How to Stay Exempt.”
- **BoardSource** ([www.boardsource.org](http://www.boardsource.org)) has a number of articles on the topic in its resource center.
- **For specific guidance**, consult with a CPA or attorney, especially before undertaking an activity that may prove to violate the law. As the saying goes, it’s always better to be safe than sorry.

There are also a variety of *Nonprofit World* articles (available at [www.snpo.org/members](http://www.snpo.org/members)) to help you advocate for your cause while successfully navigating the tax laws. Here is just a sampling:

- **Building Coalitions** (Vol. 12, No. 2)
- **How to Lobby without Breaking the Law** (Vol. 14, No. 5)
- **Gaining Clout Beyond the Mainstream** (Vol. 11, No. 4)
- **Lobby? You?** (Vol. 9, No. 6)
- **In the Hot Seat: How to Respond to Pressure Groups** (Vol. 12, No. 4)
- **Building Networks, Mobilizing Forces** (Vol. 12, No. 4)
- **Ready to Erupt: How Can Coalitions Avert Conflict?** (Vol. 16, No. 4)
- **Finessing City Hall: Coalitions, Lobbying, and the Question of Power** (Vol. 6, No. 1)

Get-out-the-vote drives are acceptable if conducted in an unbiased manner.