

In any election year, many nonprofit organizations may feel inclined to voice political opinions. However, most nonprofits are unsure about the extent to which they may discuss issues of political importance or interact with elected officials or candidates. Because legislative and political activity may jeopardize an organization's tax-exempt status, it is vital to know and comply with the rules.

In return for its favored tax-status, a charitable nonprofit commits to the federal government that it will not engage in "political campaign activity" and if it does, IRS regulations mandate that the charitable nonprofit will lose its tax-exempt status. This prohibition against political campaign activity (defined as "supporting or opposing a candidate for public office") is SEPARATE from lobbying or legislative activities, which charitable nonprofits ARE permitted to engage in, although knowing the rules is important, as limitations apply.

Understanding what a nonprofit, its board and leaders and high visibility/vocal members can and cannot do requires knowing three fundamental definitions.

Political Campaign Activity. Any action or speech which favors or opposes candidates for elected public office, such as endorsements, contributions (to either candidates or political action committees (PACs), public statements for or against candidates, or distribution of materials which favor or oppose candidates. Simply stated, political campaign activity is any speech or activity intended to impact the election of an individual to a public office.

Lobbying. Any action or speech which attempts to impact the adoption or defeat of legislation, such as direct contact with voting members of a legislative body to encourage them to vote for or against a particular bill, encouraging the public to contact legislators about a particular bill, or advocating a position on a public referendum. Lobbying is any speech or activity intended to influence how an individual member of a legislative body votes.

Advocacy. Any action or speech directed to the public for informational or educational purposes regarding an issue of interest to the nonprofit, or activities or speech directed to non-legislative governing bodies, e.g. regulators. Advocacy is any speech or activity intended to share general education and information.

Nonprofit leaders do not lose their free speech rights by virtue of their position, but they must be careful. This applies to board members, officers and active members who are widely associated with the exempt organization. Any political activity by a nonprofit leader must be clearly identified as being undertaken in the leader's individual capacity. To avoid confusion, any political activity by a board member, officers, and active members should be conducted outside the organization's property, events, and avoid use of organizations letter head, phones, or resources, etc. Leaders may not include any personal opinions on campaign issues in any publication by the organization, even if the leader pays for the article. Leaders should not make any comments or

endorsements about candidates at board meetings, member meetings, or any other organizational event.

All tax-exempt organizations may take positions on public policy issues, including issues that divide candidates. However, in advocating on an issue, tax exempt organizations may not create an impression that they favor a candidate. Issue advocacy materials must not include anything that might identify a candidate or express approval or disapproval of a candidate. In considering the facts and circumstances to determine whether any activity is issue advocacy and not political campaign activity, the IRS will consider how close in time the activity is to an election, whether there is any reference to voting and whether the activity is part of an ongoing campaign by the organization related to the issue.

Websites are important communication tools for nonprofit organizations. The IRS views a website like any printed material or personal speech by individuals in the organization, and all the above rules regarding political communication apply to websites. Links on the website can create additional concerns. If a link connects directly to a campaign or endorsement of a candidate, the organization may have violated the prohibition on political campaign activity. A voter guide published on a website with links to all candidates for information purposes only, however, is permitted. Given the high stakes of violating the prohibition on political campaign activity, tax exempt organizations should monitor the links on their web pages.

*This summary is not intended as legal advice. Application of the IRS rules to the specific facts and circumstances of any particular activity requires a case-by-case analysis. The information in this alert is accurate as of the day of publication, but regulations and their interpretation can change over time.*