

The following is for use by assistive readers and users who prefer a text version of this course.

## **Political Campaigns and Charities: The Ban on Political Campaign Intervention Course**

### **Page 1 – Welcome**

**Voice 1:** Welcome to *Political Campaigns and Charities: The Ban on Political Campaign Intervention*. This program is brought to you by IRS Exempt Organizations.

**Voice 2:** The Exempt Organizations division of the Internal Revenue Service, in keeping with its mission to help taxpayers understand and comply with the tax law, is presenting this podcast to help the directors, officers and leaders of our nation’s charities, including churches, understand the rules on participating in a political campaign.

### **Page 2 – The Law**

**Voice 2:** The law says that organizations exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code, which include charities and churches, may not participate or intervene in any political campaign on behalf of, or in opposition to, any candidate for public office.

**Voice 1:** We will explain this ban on political campaign intervention and look at how it applies to section 501(c)(3) organizations that conduct voter education activities, advocate public policy issues, or play host to candidates. Our discussion will also highlight those areas where these organizations can participate in the electoral process.

### **Page 3 – Definitions**

**Voice 2:** For the sake of brevity we will use the word “charity” in place of, “section 501(c)(3) organization” and the word “charities” to refer to all section 501(c)(3) organizations.

Likewise, we will use the term “political campaign intervention” in place of the phrase, “participating in, or intervening in, any political campaign on behalf of, or in opposition to, any candidate for public office.”

Finally, when we say “candidate for public office,” we are referring to any candidate in an election for a national, state or local public office.

Okay, let’s begin.

### **Page 4 – Prohibited Campaign Intervention**

**Voice 1:** First, let’s make sure we understand the basic rules. A charity engages in political campaign intervention when it:

- Makes or solicits contributions to or for candidates or political organizations
- Endorses a candidate or rates the candidates (no matter how objective such rating may be)
- Publishes or distributes partisan campaign literature or written statements
- Has its representatives speak out about a candidate
- Uses its resources to influence an election

All of these activities are prohibited.

## **Page 5 – Nonpartisan Activities = Permissible**

**Voice 2:** Charities are, however, allowed to conduct nonpartisan activities that educate the public and help them participate in the electoral process. A charity furthers a valid educational purpose when it offers instruction. Such instruction can take various forms, including voter education guides, voter registration and get-out-the-vote drives and candidate forums.

**Voice 1:** But take heed! An educational activity can cross over into political campaign intervention, depending on the context of how it is used!

## **Page 6 – Acts of Possible Political Campaign Intervention**

**Voice 1:** For example, charities would violate the ban on political campaign intervention by issuing a statement in support of, or opposition to, a candidate. Even a statement that does not explicitly urge its audience to vote a certain way might implicitly support or oppose a candidate if:

- The statement mentions a candidate for public office
- It expresses approval or disapproval of a candidate's positions or actions
- It is published during a political campaign
- It mentions voting or the election
- It raises an issue on which the candidates disagree

## **Page 7 – Mitigating Factors**

**Voice 2:** Then again, even with these elements present, a statement could possibly be permissible if:

- It is part of an ongoing series of communications on the same issue that are made irrespective of the timing of any election
- It is related to an event other than the election, such as a scheduled vote on specific legislation

As you can see, the answer to the question whether a statement is in support of, or in opposition to, a candidate depends on the circumstances. We will examine some of those circumstances as we proceed.

## **Page 8 – Websites**

**Voice 1:** But first, a word of caution on the use of websites to convey political statements. As the web becomes a pervasive and indeed, predominant means of communication, it is increasingly serving as the electioneer's medium of choice. Beware! Statements posted on a website are treated no differently from statements appearing in print or over the television, and a charity that posts a statement on its website that favors or opposes a candidate for public office

is at as much risk of political campaign intervention as if it had communicated in print or made oral remarks. It may be at risk, as well, if it posts links to other websites that advocate for or against a candidate.

However, links to the official campaign websites of the candidates are acceptable if:

- There is a link to every candidate's official website
- The links are presented in an educational context and are for informational purposes only
- The links are presented in a consistent, unbiased manner

*For example*, if a charity posts an unbiased, nonpartisan voters' guide on its website, it may include a link to the official campaign website of each candidate covered in the guide accompanied by the text, "For more information on Candidate [X], you may consult [URL]."

## Page 9 – Voter Education

**Voice 2:** Now let's look at some of the ways in which charities engage in voter education and what is and is not acceptable.

One way charities engage in voter education is by helping people register to vote; a second is to help them participate in an election. A charity may conduct a voter registration or a get-out-the-vote drive as long as it does so in an unbiased manner. To minimize the chance for bias, the charity and the people conducting the activities should avoid mentioning the candidates or political parties in written or spoken communications about the activity, including publicity, posters, placards, registration materials and handouts.

**Voice 1:** Any communication should do no more than urge people to register and vote or describe the hours and places of registration and voting. And, any services offered in connection with the activity – voter registration forms, transportation to the polling place – should be offered to all, regardless of their political persuasion.

## Page 10 – Voter Guides

**Voice 2:** Publishing voter guides is another way that charities can engage and educate the electorate. Voter guides inform the public of the attitudes or actions of their elected representatives or of the candidates for a public office. Such guides can take different forms. Some are compilations of the voting records of political incumbents, including incumbents standing for reelection. Others document the candidates' responses to questions posed by the charity.

**Voice 1:** Whatever its form, a voter guide must cover a broad range of issues and must refrain from judging the candidates or their positions.

## Page 11 – Voting Records

**Voice 2:** Voting records are published to report the activities of a body of lawmakers, not to comment on an election campaign. Charities that publish voting records often do so to lobby for a cause.

**Voice 1:** But, regardless of the charity's motive, voting records can be considered political campaign intervention if they identify any incumbent as a candidate in a campaign or compare an incumbent's positions with those of other candidates or the charity. This is especially so if the

voting records are published simultaneously with a political campaign or aimed at areas where campaigns are occurring.

**Voice 2:** For instance, a charity that publishes an annual compilation of the voting records of members of Congress on major legislative issues that cover a wide range of subjects is not engaged in political campaign intervention if the publication contains no editorial opinion and its contents and structure do not imply approval or disapproval of any member or his or her voting record.

**Voice 1:** On the other hand, an organization that publishes a compilation of incumbents' voting records on *selective* issues and distributes it widely during an election campaign may have engaged in political campaign intervention, even if the guide contains no statements that support or oppose any candidate.

## Page 12 – Candidate Questionnaires

**Voice 2:** Another type of voter guide, the candidate questionnaire, can be a good tool for collecting information about candidates and the issues and disseminating the information to the public.

**Voice 1:** But, it can also be a means to intervene in a political campaign.

**Voice 2:** To avert the charge of political campaign intervention, a charity should take care in how it phrases the questions so as not to suggest a preferred answer. It should:

- Send the questionnaire to *all* candidates for a particular office
- Publish all the responses it receives without substantive editing
- Avoid comparing those responses to its own positions

## Page 13 – Issue Advocacy

**Voice 1:** As we have seen, a charity may not advocate for or against a candidate for public office.

**Voice 2:** On the other hand, it may advocate for or against a particular issue as long as that advocacy furthers its mission. Charities may continue to advocate issues during a political campaign, but must not use advocacy as an excuse for, or to double as, political campaign intervention.

**Voice 1:** A charity risks intervening in a political campaign when its message invites the recipient to compare a candidate's position on an issue with the organization's own views. The message need not expressly urge a vote for or against a candidate, nor need it even mention a candidate by name. Candidates can be conjured up by substituting party labels or code words for names like, "conservative," "liberal," "pro-life," "pro-choice" or when the message concerns an issue that figures prominently in the campaign and on which the candidates hold opposing views.

Imagine, for instance, two candidates running for the state senate in an urban district. One candidate favors a controversial mass-transit project, and the other opposes it. A local charity dedicated to community development and an advocate for mass-transit would be engaging in political campaign intervention if its director were to give a public address shortly before the election and tell the audience:

*For those of you who care about quality of life in our district and its 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 for state senator.*

**Voice 2:** A charity can continue advocating for its issues during an election, but it should avoid mentioning voting or an election and it should not identify whether candidates agree with its position. If the charity has a pattern of substantially similar advocacy during non-election periods, this is another helpful factor that indicates it is not attempting to intervene in any particular election.

## **Page 14 – Non-candidate Appearances**

**Voice 2:** Now let's talk about candidate appearances at charity functions. Candidates often attend or are invited to speak at charity ceremonies or functions either in the role of candidate or in some other role like a subject matter expert, public figure or celebrity, for example.

When a candidate appears in a role other than that of candidate or to speak on a topic other than the election, the host charity should make certain that:

- It maintains a nonpartisan atmosphere at the event
- None of its representatives mentions the campaign or the invitee's candidacy
- No campaign activity occurs during the candidate's appearance

Furthermore, any announcement concerning the candidate's appearance (such as an invitation) should clearly indicate the capacity in which the candidate is to appear and avoid mention of his or her candidacy.

**Voice 1:** The host charity should inform the invitees that the events are not campaign events and obtain their commitment to appear in their non-candidate capacity and not mention the election or their candidacy.

## **Page 15 – Candidate Appearances**

**Voice 1:** A charity that invites one candidate to speak in the role of candidate is engaging in political campaign intervention unless it gives all qualified candidates an equal opportunity to speak. If the charity invites one candidate to speak at its popular annual banquet and invites the opposing candidate to speak at a sparsely attended general meeting, it has not given the candidates an equal opportunity. The speaking invitations and events must be substantially similar.

Plus, the charity must make it clear that it neither supports nor opposes the invitee's candidacy. Needless to say, no political fundraising should be allowed at the event.

## **Page 16 – Candidate Forums**

**Voice 2:** One solution is to have all the candidates appear together on the same stage and answer questions posed by a moderator or by members of the audience. A candidate forum gives its audience a unique opportunity to evaluate and compare the candidates.

**Voice 1:** But the host charity must see to it that the candidates are treated fairly and impartially.

**Voice 2:** A candidate forum is more likely to be fair and impartial if:

- All qualified candidates for a given office are invited to the forum
- The questions are prepared and presented by an independent nonpartisan panel
- The discussion covers a broad range of issues of interest to the public
- Each candidate is given an equal opportunity to speak
- The moderator and the forum's sponsors refrain from commenting on the questions, the answers or the candidates

## **Page 17 – Electioneering by Charity Officials**

**Voice 1:** While a charity is forbidden to participate or intervene in a political campaign, directors, officers or other charity officials are not under the same restriction as long as they act in a private, not an official capacity. So as to leave no doubt, officials should make it clear that they are acting or speaking for themselves alone and not for the charity. Additionally, officials may not use the charity's financial resources, facilities or personnel in their efforts to support or oppose a candidate.

**Voice 2:** Officials acting in a private capacity may mention their association or position with the charity for the purpose of identifying themselves, but they should disclaim any endorsement of their actions by the charity. On printed matter, the following language would serve as a sufficient disclaimer:

*“Organization shown for identification purposes only; no endorsement by the organization is implied.”*

**Voice 1:** In contrast, officials are not acting in a private capacity when they endorse a candidate at charity functions or through the charity's official publications. Then their actions are considered to be the actions of the charity, and the charity itself is considered to have engaged in political campaign intervention.

## **Page 18 – Consequences of Intervention**

**Voice 2:** What happens if the IRS finds a charity engaged in prohibited campaign activity?

**Voice 1:** The charity could lose its tax-exempt status, and it could be subject to an excise tax on the amount of money spent on that activity.

Since 2004, the IRS has conducted limited scope examinations of allegations of political campaign activity by section 501(c)(3) organizations. While less than half of the allegations received resulted in an examination, the IRS found political campaign intervention in over two-thirds of the organizations that were selected for examination.

**Voice 2:** As we are primarily interested in educating organizations and promoting compliance, in most of these cases, we alerted the organization to the violation and strongly cautioned them not to repeat the activity.

**Voice 1:** Because the tax law forbids charities to participate or intervene in any political campaign for or against any candidate for public office, the IRS could revoke the exempt status of a charity that engages in political campaign intervention. We have proposed revocation in a few egregious cases.

## Page 19 – IRS Resources

**Voice 2:** To help charities, the media and the public understand the political campaign intervention rules, the IRS publishes guidance and maintains a comprehensive web page.

Among other helpful tools at [www.irs.gov/eo](http://www.irs.gov/eo), you will find:

- IRS Revenue Ruling 2007-41, which outlines a number of scenarios to help charities and churches understand the ban on political campaign activity and actions that may arise
- Publication 1828, *Tax Guide for Churches and Religious Organizations*, which discusses the political campaign prohibition as it applies to churches
- *EO Update*, a free on-line newsletter