

Political Activities and 501(c)(3)s: What's Allowable, Part 2

08.11.16 | Linda J. Rosenthal, JD



The absolute ban in section 501(c)(3) of political campaign activities takes on special importance now that we're in the middle of an election season with hotly contested, emotionally charged, and divisive races at all levels of government. For a bit of background on the how this rigid prohibition came about, see [The Political Ban in 501\(c\)\(3\): Its Odd History](#).

There are a few types of politics-related activities that are not covered by this ban, either because they are considered exceptions to the ban or they are, by their nature, not within the definition in section 501(c)(3).

These activities include:

- Voter-registration and "get-out-the-vote drives (so long as they are conducted in a nonpartisan manner); and
- Candidate participation in nonpartisan forums or voter-education events, or attendance at events where the person's candidacy is not mentioned or irrelevant.

In [Political Activity and 501\(c\)\(3\)s: What's Allowed, Part 1](#), we examined the first category – neutral voter registration efforts – highlighting several examples in IRS [Revenue Ruling 2007-41](#).

Here, in Part 2, we turn our attention to candidate forums and appearances, in which a person appears as a candidate for a particular office – whether or not that person is (otherwise) a government official or prominent community leader.

Why Neutral Candidate Appearances Are Allowed



Section 501(c)(3) is just 132 words long; the politics ban is tacked on at the end as the final phrase comprising 31 words that describe a disqualification from eligibility.

That is to say, qualifying organizations are: *“Corporations, and any community chest, fund, or foundation, organized and operated exclusively for [...exempt...] ... no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation (except as otherwise provided in subsection (h)), and which does not participate, 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. (emph. added)”*

As we explained in Part 1, “[t]he challenge, then, is to understand what that last phrase means,” and which activities are within this ban or not.

A few examples that are clearly prohibited include:

- Hosting a political candidate for a campaign speech
- Using organizational funds to create and distribute information in support or in opposition to a candidate
- Writing a check from the organization’s bank account to a political campaign.

There are certain types of activities, though, that are generally not prohibited under the 501(c)(3) political ban if they are conducted “in a nonpartisan manner.” These include “certain voter education activities, including presenting public forums” and “publishing voter education guides.”

In Revenue Ruling 66-256, 1966-2 C.B. 210, the IRS presented a hypothetical example of a nonprofit organization “formed to conduct public forums at which lectures and debates on social, political, and international matters are presented.” Concluding that “...the presentation of public forums or debates is a recognized method of educating the public,” IRS officials explained that activities like this do not come within the general political campaign ban of 501(c)(3). Of course, “a forum for candidates could be operated in a manner that would show a bias or preference for or against a particular candidate. This could be done, for example, through biased questioning procedures. On the other hand, a forum held for the purpose of educating and informing the voters, which provides fair and impartial treatment of candidates, and which does not promote or advance one candidate over another, would not constitute participation or intervention in any political campaign on behalf of or in opposition to any candidate for public office.”

Similarly, in Revenue Ruling 74-574, 1974-2 C.B. 160, the IRS concluded that an “organization operating a broadcast station is not participating in political campaigns on behalf of public candidates by providing reasonable amounts of air time equally available to all legally qualified candidates for election to public office in compliance with the reasonable access provisions of the Communications Act of 1934.”

See also Revenue Ruling 86-95, 1986-2 C.B. 73, in which an “organization that proposed to educate voters by conducting a series of public forums in congressional districts during congressional election campaigns is not participating in a political campaign on behalf of any candidate due to the neutral form and content of its proposed forums.”



Examples in Rev. Rul. 2007-41

There are more recent, helpful, explanations and examples in a major revenue ruling from 2007.

Out of 21 examples in [Revenue Ruling 2007-41](#), three of them apply to candidate appearances.

The first two involve invitations to all candidates, not at joint public forums or debates, but on separate dates:

- **Situation 7.** 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.
- **Situation 8.** The facts are the **same as in Situation 7** except that there are four candidates in the race rather than three, and one of the candidates declines the invitation to speak. In the publicity announcing the dates for each of the candidate's speeches, Society N includes a statement that the order of the speakers was determined at random and the fourth candidate declined the Society's invitation to speak. President E makes the same statement in his opening remarks at each of the meetings where one of the candidates is speaking. Society N's actions do not constitute political campaign intervention.

Situations 7 and 8 both get a "thumbs-up." Contrast Situation 9, which is an easy "thumbs-down" call:

- **Situation 9.** Minister F is the minister of Church O, a section 501(c)(3) organization. The Sunday before the November election, Minister F invites Senate Candidate X to preach to her congregation during worship services. During his remarks, Candidate X states, '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.' Minister F invites no other candidate to address her congregation during the Senatorial campaign. Because these activities take place during official church services, they are attributed to Church O. By selectively providing church facilities to allow Candidate X to speak in support of his campaign, Church O's actions constitute political campaign intervention.

In Revenue Ruling 2007-41, the Internal Revenue Service adds this additional explanation: "In determining whether candidates are given an equal opportunity to participate, the nature of the event to which each candidate is invited will be considered, in addition to the manner of presentation. For example, an organization that invites one candidate to speak at its well attended annual banquet, but invites the opposing candidate to speak at a sparsely attended general meeting, will likely have violated the political campaign prohibition, even if the manner of presentation for both speakers is otherwise neutral."



Conclusion

In the next part of this series, we'll explain the additional – trickier – analysis in Revenue Ruling 2007-41 about when a candidate appears or is asked to speak at an organizational event in a “non-candidate capacity.”

The person may be invited because he or she is already an office-holder, or is an expert in a certain field, or has led a distinguished career. And, of course, a candidate is free to attend any organization-sponsored event that is open to the public – a “lecture, concert or worship service,” for instance.

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