

# Political Activities and 501(c)(3)s: What's Allowable, Part 5

09.15.16 | Linda J. Rosenthal, JD



As part of our series on some of the dicier aspects of the political campaign intervention ban in section 501(c)(3), we've used [Revenue Ruling 2007-41](#) as a guide.

In [Part 1](#) and [Part 2](#) of this series, we reviewed certain categories of activities that are outside the scope of the politics ban; that is, (1) voter-registration and “get-out-the-vote” drives (conducted in a neutral, nonpartisan manner); and (2) candidate participation in nonpartisan forums or voter-education events. We used examples primarily from IRS [Revenue Ruling 2007-41](#).

In [Part 3](#), we discussed the “dicier situations that can arise by a candidate attendance at events where the person’s candidacy is not mentioned or is irrelevant, or a candidate’s attendance at 501(c)(3)-sponsored events that are open to the public.” In [Part 4](#), we covered the distinction between “advocacy” and “political campaign intervention.”

Here, in Part 5, we consider “whether an activity constitutes participation or intervention in a political campaign” in connection with a “business activity” of a 501(c)(3), “such as selling or renting of mailing lists, the leasing of office space, or the acceptance of paid political advertising.”

## *Applicable Law*

[Section 501\(c\)\(3\)](#) of the Internal Revenue Code is the definitional section that describes which entities are eligible for this highly favorable category of tax exemption. It is brief; just 132 words.

The politics ban is the final phrase, here bolded: “Corporations, and any community chest, fund, or foundation, organized and operated exclusively for [...exempt...] purposes ... 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 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.** (emph. added)”

### *Rev. Rul. 2007-41 Guidance*

The section in [Revenue Ruling 2007-41](#) that deals with “Business Activity” includes an explanation of “some of the factors to be considered in determining whether the organization has engaged in political campaign intervention.” They “include the following:

- Whether the good, service or facility is available to candidates in the same election on an equal basis,
- Whether the good, service, or facility is available only to candidates and not to the general public,
- Whether the fees charged to candidates are at the organization’s customary and usual rates, and
- Whether the activity is an ongoing activity of the organization or whether it is conducted only for a particular candidate.

### *Rev. Rul. 2007-41 Hypotheticals*

Two hypotheticals illustrate the application of these factors:

- **Situation 17.** “Museum K is a section 501(c)(3) organization. It owns an historic building that has a large hall suitable for hosting dinners and receptions. For several years, Museum K has made the hall available for rent to members of the public. Standard fees are set for renting the hall based on the number of people in attendance, and a number of different organizations have rented the hall. Museum K rents the hall on a first come, first served basis. Candidate P rents Museum K’s social hall for a fundraising dinner. Candidate P’s campaign pays the standard fee for the dinner. **Museum K is not involved in political campaign intervention** as a result of renting the hall to Candidate P for use as the site of a campaign fundraising dinner. “(emph. added)

Situation 17 gets a “thumbs-up” from the Internal Revenue Service, while Situation 18, below, gets a “thumbs-down.”

- **Situation 18.** “Theater L is a section 501(c)(3) organization. It maintains a mailing list of all of its subscribers and contributors. Theater L has never rented its mailing list to a third party. Theater L is approached by the campaign committee of Candidate Q, who supports increased funding for the arts. Candidate Q’s campaign committee offers to rent Theater L’s mailing list for a fee that is comparable to fees charged by other similar organizations. Theater L rents its mailing list to Candidate Q’s campaign committee. Theater L declines similar requests from campaign committees of other candidates. **Theater L has intervened in a political campaign.**” (emph. added)

### *Conclusion*

While business activities may not ordinarily be considered a form of political campaign activity, in certain circumstances, it can spell trouble for the sponsoring 501(c)(3) organization.

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