

Permissible Issue Advocacy vs. Prohibited Campaign Intervention

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Organizations exempt from federal taxation under Internal Revenue Code section 501(c)(3) may not intervene in any campaign for public office on behalf of, or in opposition to, any candidate or political party. At the same time, organizations retain their First Amendment right to speak out on social issues and to advocate for public policy. The distinction between permissible issue advocacy and prohibited campaign intervention can be fuzzy; this area of the law does not always lend itself to bright-line tests.

To help nonprofits determine whether their communications are allowable, the IRS has articulated a series of factors it considers when examining messages for political content. The more factors that are present, and the greater degree to which they are evident, the stronger the likelihood that the IRS will find an organization has crossed the line into prohibited campaign intervention.

Factors indicating a communication is political:

- The communication identifies a candidate;
- The communication reflects a view on a candidate's actions;
- The timing of the communication coincides with an election;
- The communication refers to voting or to an election;
- The communication identifies a candidate's position on a public policy issue, and that issue has been raised as distinguishing the candidate from other candidates for that office;
- The communication is not part of an ongoing series of substantially similar advocacy communications by the organization on the same issue; and
- The timing is not related to non-electoral event (e.g., a scheduled legislative vote).

Sophisticated organizations will use these factors to maximize their ability to influence public-policy debates in their communities without jeopardizing their tax-exempt status. Election season offers a prime opportunity to raise the profile of public-policy issues: people are speaking out on issues that impact their lives; journalists are covering public policy; and government officials are paying close attention to voters' concerns.

By considering the factors listed above, organizations can insert their issues into the public conversation without threatening their tax exemption. Peg communications to external events such as legislative votes (keeping in mind the IRS lobbying rules, as well as federal, state and local lobbying laws); recognize the risks involved with mentioning an election or voting; be extra careful when identifying public officials who are candidates in an upcoming election; and seek counsel from someone well-versed in these issues.

This overview is intended to summarize aspects of the IRS treatment of communications by section 501(c)(3) organizations. It is not intended as a comprehensive summary, nor is it intended to provide legal advice. Consult a lawyer, as the IRS treatment depends on an organization's particular facts and circumstances.