



Community Action Program Legal Services, Inc.

IRS Finds Charities Violated Ban on Campaign Activity

May 2006 CAPLAW Update

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Nearly three-quarters of the tax-exempt charities examined by the IRS for political campaign intervention during the 2004 election did in fact engage in prohibited campaign activity, the IRS reported recently. The report summarized the results of the IRS's Political Activities Compliance Initiative (PACI), an effort by the IRS to step up efforts during the 2004 election season to promote compliance with the tax code's prohibition on 501(c)(3) organizations participating or intervening in any political campaign on behalf of or in opposition to any candidate for elective public office.

The report's findings form the basis of an enhanced IRS program to ensure that tax-exempt charities know the legal prohibitions against engaging in political campaigns and the consequences of violating them. They also underlie new procedures for the 2006 election season that allow the IRS to move more swiftly to stop inappropriate political campaign intervention when it is discovered. The IRS report and accompanying materials are available online at: www.irs.gov/charities/article/0,,id=154622,00.html.

Under PACI, the IRS fast-tracked examinations of referrals alleging violations of the political activity ban. Of 110 referrals of tax-exempt organizations investigated (both churches and nonchurches), 82 cases have been closed; the balance are still under investigation. Of the 82 closed cases, the IRS found that 72 percent had intervened in a political campaign in violation of the tax code. The vast majority of those violating organizations were issued an advisory letter by the IRS, although the IRS proposed revoking the tax exemptions of three of them.

The report provides examples of prohibited political activities allegedly engaged in by the organizations being examined:

- Distribution of printed documents supporting candidates, including newsletters, church bulletins, inserts in church bulletins, and letters to members.
- Statements by church officials during normal services endorsing or opposing candidates, even if not expressly.
- A speech by a candidate at an official organization function in a manner constituting campaign intervention (i.e. not part of a candidate forum or pursuant to an established policy allowing all candidates to address the group's membership on equal terms).
- Distribution of improper voter guides or candidate ratings.
- Posting, by an organization, of a sign on its property endorsing a candidate.
- Candidate endorsements by an organization on its website or through links to its website.

- Verbal endorsements by an organization official.
- Political contribution made by an organization to a candidate using the organization's own funds.
- Endorsement of a candidate by a non-candidate at an organization's function.

The fact sheet issued by the IRS (Fact Sheet 2006-17) to accompany the report provides additional examples of prohibited political activities:

- Public statements of position (verbal or written) made by or on behalf of an organization in favor or in opposition to any candidate, even if not an "endorsement."
- Distribution of statements prepared by others favoring or opposing candidates.
- Allowing candidates to use the organization's assets or facilities if other candidates are not given an equal opportunity.
- Voter registration or voter education activities conducted in a manner favoring or opposing one candidate. (For example, a 501(c)(3) environmental organization conducts a phone poll of registered voters on environmental issues shortly before an election in which one candidate's platform challenges the incumbent's environmental policies. If a voter called expresses views that appear to agree with the candidate's position, s/he is encouraged to vote and offered transportation to polls; if the voter expresses support for incumbent's views, the call is ended.)
- During a regular meeting of the organization shortly before the election, the chairman of the board states, "It is important that you all do your duty in the election and vote for Candidate W."

The IRS fact sheet also affirms that 501(c)(3)s may conduct some activities that relate to elections, such as voter registration, voter education, and candidate debates, and candidates may appear at organization events, but only if such activities are carried on in an unbiased manner. Individuals associated with 501(c)(3)s may personally support candidates, but the line between personal and organization support must be clear. The fact sheet provides some examples of permissible activities, including:

- The president of a 501(c)(3) hospital, a well-known community figure, has personally endorsed a candidate and is listed as a supporter in a newspaper ad published and paid for by the candidate that includes the president's name, title, and hospital affiliation. The ad states "Titles and affiliations of each individual are provided for identification purposes only."
- In the month prior to the election, the president of a 501(c)(3) historical society invites the three local congressional candidates to address the society's members, one each at a regular meeting held on three successive weeks. The publicity and remarks related to the speeches do not indicate a preference for any candidate. Each candidate is given an equal opportunity to address and field questions on a wide variety of topics.
- A hospital that is building a new wing invites a congressman running for reelection to attend the groundbreaking ceremony. Neither the hospital president nor the congressman makes any reference at the ceremony to the congressman's candidacy for reelection and no fundraising is conducted.
- The IRS fact sheet contains many additional examples of permissible and impermissible activities that should serve as a useful guide to 501(c)(3)s in general.

The tax code's ban on intervention in political campaigns applies to private, nonprofit Community Action Agencies (CAAs). In addition, all CAAs should be aware that political activity restrictions in other statutes and regulations apply to them, such as the Hatch Act, the Community Services Block Grant and Head Start Acts and Office of Management and Budget Circular A-122. For more information, see additional CAPLAW political activity articles, as well as the U.S. Department of Health and Human Services Office of Community Services' Information Memorandum No. 81 (December 14, 2004) on Voter Registration Activities, available on [CAPLAW's website](#).

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