

Understanding Political Activity and Issue Advocacy: An Introduction for Tax-Exempt Nonprofits

By *Timothy Noonan*¹

Introduction

With election day quickly closing in, leaders of 501(c)(3) tax-exempt organizations should protect their organizations' tax-exempt statuses by revisiting the Internal Revenue Service ("IRS") restrictions on political activity and ensuring their organizations remain in compliance.²

The IRS breaks political activity into two key categories: (1) lobbying and (2) political campaigning.

"Lobbying" means attempting to influence particular legislation. The IRS permits organizations exempt under § 501(c)(3) of the Internal Revenue Code ("IRC") to engage in some lobbying, but not a *substantial* amount.

Of course, this leads to the question: how do you know when your organization has crossed the line from permissible lobbying activities into *substantial* lobbying? The answer will be discussed below.

"Political campaigning" means trying to help a particular person be elected to government office. A 501(c)(3) organization is *absolutely prohibited* from any political campaigning at all.

Can a 501(c)(3) engage at all with current issues such as religious liberty, the sanctity of life, and the alleviation of poverty?

The answer is yes, however, such organizations must understand the differences

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² Note that [501\(c\)\(4\)](#) organizations are subject to different rules and regulations regarding political activity. For example, 501(c)(4) organizations may engage in political campaigning, so long as such activity is not their primary purpose. They may also engage in an unlimited amount of lobbying, so long as this activity is related to their "social welfare" purpose. For more information, see IRS resources on [social welfare organizations](#).

between permissible and impermissible forms of advocacy.

Lobbying

What is lobbying?

Lobbying includes activities such as: (1) contacting, or urging the public to contact, members of a legislative body for the purpose of proposing, supporting, or opposing legislation; or (2) advocating for the adoption or rejection of legislation. However, lobbying generally does not include non-partisan study, research, and analysis of legislation, even if the results are provided to the public.

When is lobbying substantial?

The IRS doesn't have a clear test for when lobbying becomes "substantial," but they have made clear the focus is on *how much* of an organization's resources, particularly time and energy, are diverted from the organization's normal activities into lobbying.

Specifically, in determining whether the lobbying activities are substantial, the IRS may look at the (1) amount of time, money, and effort spent on lobbying activity, (2) amount of space or equipment used for lobbying activity, and (3) publicity received for lobbying activity.³ There is no percentage test used when engaging in this analysis.⁴

For example, in the *Christian Echoes Nat'l Ministry v. United States* case, a religious 501(c)(3) organization was deemed to be engaging in a substantial amount of lobbying when the organization posted numerous articles attempting to sway public opinion related to legislation and called for their readers to contact their local legislators to influence decisions on twenty-two legislative issues.⁵ Refusing to apply a percentage-based test, the court held that, by its repeated and constant posting, the nonprofit engaged in substantial and continuous, rather than incidental, attempts to influence legislation.⁶

Political Campaign Activity

Campaign activity is defined as making statements, printed or oral, that are in favor or

³ [I.R.S. Gen. Couns. Mem. 36418 \(1975\)](#). Setting out which factors courts have considered when making "substantiality determinations." Also, this memorandum said that the I.R.S. should not adopt any form of a percentage test.

⁴ See [26 U.S.C. § 501\(h\)](#), which allows for organizations to opt for the expenditure test. This test allows organizations to set a cap for expenditures put toward lobbying in a given year. By opting for this test nonprofits avoid the ambiguity of the substantiality test.

⁵ [Christian Echoes Nat'l Ministry v. United States](#), 470 F.2d 849, 855 (10th Cir., 1972).

⁶ *Id.*

against certain candidates.⁷ Here, the rule is black-and-white: 501(c)(3) organizations must completely avoid campaign activity.

Issue Advocacy

How can a concerned 501(c)(3) organization engage with the community, as encouraged by Catholic Social Teaching?

The primary methods to consider, in consultation with an attorney, include voter education and issue advocacy.

For example, a 501(c)(3) organization could create and distribute voter guides or similar voter education manuals, showing the political candidates and outlining their views on the issues that are relevant to the organization's mission.⁸ However, the nonprofit may not offer its own opinion on the candidates' policy positions in the guides. Voter guides in particular should be developed in consultation with an attorney, as this approach could easily inadvertently cross over into political campaign activity, or at least the appearance of such.

Similarly, a 501(c)(3) organization can spread awareness about matters of concern, providing the education as part of an overall strategy, not simply a reaction to a political event or upcoming election or legislative vote.

While 501(c)(3) organizations cannot support or oppose candidates, the IRS tolerates advocacy on behalf of political issues. In other words, the IRS allows issue advocacy, as opposed to campaign advocacy.⁹ Unfortunately, the line between the two can be difficult to draw.

For example, if a 501(c)(3) organization released a statement a few months before an election saying, "We endorse [NAME] for President," this would clearly be campaign advocacy.¹⁰ Meanwhile, if the organization, consistently, over a period including both election and non-election seasons, issued statements to the effect of "we believe that abortion should be ended," this would most likely be issue advocacy, even if this aligns with a current candidate's campaign.¹¹

⁷ [Treas. Reg. § 1.501\(c\)\(3\)-1\(c\)\(3\)\(iii\)](#).

⁸ [2007 IRB Lexis 495, Rev. Rul. 2007-41. \(I.R.S. June 18, 2007\)](#).

⁹ *Id.* In this ruling, the IRS further declared that nonprofits may engage in issue advocacy and remain tax-exempt.

¹⁰ [Treas. Reg. § 1.501\(c\)\(3\)-1\(c\)\(3\)\(iii\)](#). A written statement in direct support for a candidate would cause the organization to be considered an "action organization" under this section of the treasury regulations.

¹¹ [Rev. Rul. 2007-41 \(June 18, 2007\)](#). Generally, the IRS stated here that an organization taking a position on a policy issue would be issue advocacy.

This line between permissible and impermissible activity becomes unclear when issue advocacy appears to be a pretext for campaign advocacy. This occurs when statements clearly favor one candidate over the other, even if it is without mentioning a candidate by name.¹² When making this determination, the IRS looks at the context of the statement.¹³

For example, consider again a 501(c)(3) organization that wishes to advocate against abortion. The statements most likely would be considered issue advocacy if they make no reference to voting, do not mention political parties or candidates, and are not made close in time to an election.¹⁴ If the statements were made close in time to an election, they may still be allowed if they were part of ongoing communications not related to the timing of the election.¹⁵ In contrast, if an organization historically has not conducted issue advocacy and suddenly, just before an election, begins releasing statements related to a controversial issue in the race, the organization might be more at risk.

Note that such statements would not need to be neutral on a particular issue. The IRS allows 501(c)(3) organizations to publicize their opinions and even attempt to sway public opinion, so long as such statements fall under issue, and not campaign, advocacy.¹⁶

Conclusion

Because the law on this topic can be unclear, it would be wise to consult with an attorney before engaging in any political activity through your religious nonprofit. Also, remember that just because an organization is a tax-exempt nonprofit, this does not mean that the organization must remain totally disengaged from current events

¹² *Id.* This is the underlying difference between issue advocacy and campaign advocacy discussed in the IRS ruling. Nonprofits cannot communicate in such a way that they clearly send a message about which candidate they support.

¹³ *Id.* Here, the IRS outlines the seven factors that are considered when drawing the line on such a statement. They are: (1) whether it identifies a candidate; (2) whether it approves/disapproves a candidate's positions; (3) whether it references voting; (4) whether it is made close in time to an election; (5) whether the candidates disagree on the issue; (6) whether there is an ongoing communication about the issue, separate from election season; and (7) whether it is close in time to a non-electoral event.

¹⁴ *Id.* See the previous footnote for the relevant factors from this ruling.

¹⁵ *Id.*

¹⁶ [Treas. Reg. § 1.501\(c\)\(3\)-1\(d\)\(2\)](#). It is within the definition of a 501(c)(3) charitable purpose for an organization to attempt to mold public opinion on social issues, so long as it does not turn into an action organization. See, however, [Treas. Reg. § 1.501\(c\)\(3\)-1\(d\)\(3\)](#), clarifying that if the nonprofit is organized for an educational purpose, they must present a complete picture of the issue so as to lead the public to independent conclusions.



and social concerns.

For example, consider The Federalist Society, a tax-exempt nonprofit that is dedicated to creating political debate. This disclaimer found on their website perfectly outlines compliance with the law discussed in this blog:

“We do not lobby for legislation, take policy positions, or sponsor or endorse nominees and candidates for public service. Beyond our statement of purpose the Federalist Society takes no public policy positions and does not participate in activism of any kind.”¹⁷

If you are interested in learning about this subject in more depth, you may find the United States Conference of Catholic Bishops’ [Political Responsibility Guidelines page](#) helpful.

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¹⁷ <https://fedsoc.org/frequently-asked-questions>.