



OFFICE OF THE NEW YORK STATE ATTORNEY GENERAL CHARITIES BUREAU

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Guidance for Tax-Exempt Organizations on Political Activity and Lobbying

The Charities Bureau has issued this guidance to assist nonprofit organizations in understanding the prohibitions against political activity by certain tax-exempt organizations, as well as election-related activities in which they may engage. It should not, however, be viewed as a substitute for advice from an organization’s attorney.

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Charitable organizations, including houses of worship, that receive a tax exemption pursuant to section 501(c)(3) of the Internal Revenue Code (“IRC”) are absolutely prohibited from “participat[ing] in, or intervene[ing] in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.” However, this prohibition does not mean that charities may not engage in non-partisan election-related activities, and, in fact, some charities are formed for the express purpose of promoting nonpartisan civic engagement.

What Election-Related Activities by 501(c)(3) Organizations are Prohibited?

The IRC prohibits, without exception, organizations that are tax-exempt under Section 501(c)(3) from engaging in any political campaign activity. New York State’s Tax Law, section 1116(a)(4), prohibits New York organizations and other entities formed for charitable purposes from engaging in any political activities prohibited by IRS 501(c)(3). That means that those organizations (referred to here as “501(c)(3) organizations) are forbidden from:

- Making or soliciting contributions for, on behalf of, or against any candidate for public office or to a political party. A candidate for public office includes any candidate in an election for a national, state or local public office.

- Endorsing or opposing a particular candidate or political party. Rating a candidate is also prohibited, no matter how objective such a rating may be.
- Making statements in support of or in opposition to a candidate or a political party, whether orally, recorded or in writing, including by in-person distribution, mail, email, text, or posting on social media or the Internet. The organization may, however, be able to speak in opposition to the policies or actions of a current public official who is running for office, as discussed below at the end of this section.
- Using the organization’s resources - including office space, telephones, internet account, printers, employee time - to engage in political campaign activity.
- Providing funds from a 501(c)(3) organization to a 501(c)(4) organization which engages in political activity without controls to assure that the funds are used solely for 501(c)(3) exempt activities, and not for political campaign activity.

The social media activities of an individual are attributable to an organization when those activities are conducted during the person’s hours of employment and/or state or imply that they are being made on behalf of an

A violation of these prohibitions may result in the denial or revocation of tax-exempt status by the IRS, the loss of exemption from New York income, sales and use taxes, and enforcement or regulatory actions by the New York Attorney General.

Determining whether a statement is in support of or against a candidate’s election to office depends on the circumstances. Even if a statement does not explicitly urge its audience to vote in a certain way, a 501(c)(3) organization may (but does not always) implicitly support or oppose the candidate if it expresses approval or disapproval of a candidate’s position or actions, it mentions voting, or it raises an issue on which candidates agree or disagree.

The IRS provides the following example of issue advocacy that crosses the line into partisan political advocacy:

“Imagine, for instance, two candidates running for the state senate in an urban district. One candidate favors a controversial mass-transit project, and the other opposes it. A local charity dedicated to community development and an advocate for mass-transit would be engaging in political campaign intervention if its director were to give a public address, shortly before the election, and tell the audience:

For those of you who care about quality of life in our district and its growing traffic congestion, there is a very important choice coming up next month. We need new mass

transit. You have the power to relieve the congestion and improve your quality of life. Use that power when you go to the polls and cast your vote for state senator.”¹

The IRS provides the following example of allowable, nonpartisan issue advocacy during election season:

“University O, a section 501(c)(3) organization, prepares and finances a full-page newspaper advertisement that is published in several large circulation newspapers in State V shortly before an election in which Senator C is a candidate for nomination in a party primary. Senator C represents State V in the United States Senate. The advertisement states that S. 24, a pending bill in the United States Senate, would provide additional opportunities for State V residents to attend college, but Senator C has opposed similar measures in the past. The advertisement ends with the statement ‘Call or write Senator C to tell him to vote for S. 24.’ Educational issues have not been raised as an issue distinguishing Senator C from any opponent. S. 24 is scheduled for a vote in the United States Senate before the election, soon after the date that the advertisement is published in the newspapers. Even though the advertisement appears shortly before the election and identifies Senator C’s position on the issue as contrary to O’s position, University O has not violated the political campaign intervention prohibition because the advertisement does not mention the election or the candidacy of Senator C, education issues have not been raised as distinguishing Senator C from any opponent, and the timing of the advertisement and the identification of Senator C are directly related to the specifically identified legislation University O is supporting and appears immediately before the United States Senate is scheduled to vote on that particular legislation. The candidate identified, Senator C, is an officeholder who is in a position to vote on the legislation.”²

As this second example illustrates, a 501(c)(3) organization is permitted to discuss issues in furtherance of its exempt purposes, even if the discussion coincides with an election where candidates have aligned themselves on a side of an issue, as long as there is no reasonably overt indication that the organization supports or opposes a particular candidate. Among the many criteria considered by the IRS in determining that a particular statement does not constitute political activity are whether the “timing of the communication is related to a non-electoral event such as a scheduled vote on specific legislation by an officeholder who also happens to be a candidate for public” or whether “the communication is part of an ongoing series of communications by the organization on the same issue that are made independent of the timing of any election.”³

¹ See https://www.stayexempt.irs.gov/se/files/downloads/PoliticalCampaigns_Print.pdf

² <https://www.irs.gov/charities-non-profits/news-releases-and-fact-sheets-on-political-campaign-activities>

³ See <https://www.irs.gov/pub/irs-news/fs-06-17.pdf> for other criteria and illustrative hypothetical scenarios.

What Election-Related Activities by 501(c)(3) Organizations are Permitted?

According to the IRS, “*Certain activities or expenditures are (permitted) depending on the facts and circumstances.*” Generally, charities are allowed to conduct nonpartisan activities that educate the public and help them participate in the electoral process. For example, presenting at public forums and publishing voter education guides does not constitute prohibited political campaign activity as long as the activity is conducted in a non-partisan manner.

Examples of such activity include:

- Distribution or posting of non-partisan voter guides that may include links to other non-partisan educational sites.
- Voter registration and get-out-the-vote drives that encourage people to register and/or vote without reference to any political party or candidate. Such programs may include distribution of registration applications and offer transportation on election day. Such services must be offered to people regardless of their political affiliation.
- Distribution of non-partisan voter guides that provide information to the public about the positions taken by elected officials or candidates in a wide range of issues, without taking a position on their positions.
- Publication of legislators’ voting records to report the activities of a body of lawmakers. Voting records could be considered political campaign intervention if they identify an incumbent as a candidate or compare an incumbent’s position with other candidates or the position of the charity. However, such publication may be permissible if it is published regularly (not just during election season) and covers all legislators (not just those running for office).⁴
- Hosting candidate forums or debates. Such events may be permissible as long as:
 - All candidates for the office are invited, even if some do not attend.
 - All candidates are given an equal opportunity to speak.

**Linking to another website:
Links are permitted in an educational context for informational purposes. Check the linked site’s contents to make sure it is non-partisan and does not mention any particular candidate.
Remember – the content of the site to which you link will be attributed to your organization. You may link to the site of a candidate in an electoral contest only if you link to the sites of ALL CANDIDATES in the race.**

⁴ See Rev. Rul. 80-282, <https://www.irs.gov/pub/irs-tege/rr80-282.pdf>

- Multiple topics are covered, and the questions asked are formulated and presented in a nonpartisan manner.
- Appearance at organization’s events of a current public official who is running for office. An organization does not have to cease contact with a public official merely because that person is also running for office. However, if a public official running for office appears at an organization’s public event, the organization must ensure that:
 - the official is chosen to speak for a reason other than their candidacy for public office;
 - the official speaks in their capacity as a public official;
 - the official’s candidacy is not mentioned by the official or the organization;
 - no campaign activity occurs at the event, and the organization maintains a nonpartisan atmosphere.

May a 501(c)(3) Organization Host a Candidate at its Own Event?

Candidates may be invited to an organization’s event as long as the candidate does not engage in campaigning or fundraising during the event. The candidate may present in his or her capacity as a candidate or in his or her individual or official capacity. Candidates may appear without invitation at organization events that are open to the public. An organization that invites one candidate to speak as a candidate must give all qualified candidates an equal opportunity to speak. However, an organization may invite an official currently holding office to speak in their official capacity, even if that official is running for office, without inviting other candidates for the same office.

Remember to ask: “Is our forum operated in a manner that would show bias or preference for a particular candidate?”
For example, an event that has biased questioning procedures that favor a candidate would violate the law.

Organizations need to consider whether the presence of a public official who is running for office can reasonably be perceived as separate from the electoral campaign. The IRS provides the following examples:

Mayor G attends a concert performed by Symphony S, a 501(c)(3) organization, in City Park. The concert is free and open to the public. Mayor G is a candidate for reelection, and the concert takes place after the primary and before the general election. During the concert, the chairman of S’s board addresses the crowd and says, “I am pleased to see Mayor G here tonight. Without his support, these free concerts in City Park would not be possible. We will need his help if we want these concerts to continue next year so please

support Mayor G in November as he has supported us.” As a result of these remarks, Symphony S has engaged in political campaign intervention.

Historical society P is a section 501(c)(3) organization. Society P is located in the state capital. President G is the president of Society P and customarily acknowledges the presence of any public officials present during meetings. During the state gubernatorial race, Lieutenant Governor Y, a candidate, attends a meeting of the historical society. President G acknowledges the Lieutenant Governor’s presence in his customary manner, saying, “We are happy to have joining us this evening Lieutenant Governor Y.” President G makes no reference in his welcome to the Lieutenant Governor’s candidacy or the election. Society P has not engaged in political campaign intervention as a result of President G’s actions.⁵

When Does a 501(c)(3) Organization’s Business Activity Constitute Intervention in a Political Campaign?

Certain business activities of 501(c)(3) organizations, such as the sale or rental of mailing lists, or leasing office space, could be considered political campaign intervention. To avoid this problem, make sure that the organization’s goods, services or facilities are equally available to all candidates in the same election, the fees charged to the candidate are the organization’s usual rates and available to any candidate.⁶

May Officers, Directors or Employees of a 501(c)(3) Organization Engage in Political Campaign Activity?

Officers, directors and employees of a 501(c)(3) organization may engage in campaign activities as long as they do so in their individual capacity, it is clear that they are not acting on behalf of the organization and, as discussed above, are not using any of the organization’s resources to support the activity. Employees should also make clear orally and on any printed or recorded material in which they mention their affiliation with the organization that they are not acting on behalf of the organization, and their affiliation is being acknowledged for identification only.

On printed materials, the following language should serve as a sufficient disclaimer: “Organization shown for identification purposes only. No endorsement by the organization is implied.”

Make sure that your organization’s staff is aware of the restriction against political activity - include information about the prohibited and permissible activities in the employees’ manual or other training material.

⁵ See Rev. Rul. 2007-41, https://www.irs.gov/irb/2007-25_IRB/ar09.html

⁶ <https://www.irs.gov/pub/irs-drop/tr-07-41.pdf>

Organizations Exempt from Taxation Pursuant to Sections 501(c)(4), (5) and (6) of the Internal Revenue Code May Engage in Political Activity

Section 501(c)(4) (Social Welfare organizations), 501(c)(5) (Labor, Agricultural and Horticultural organizations) and 501(c)(6) (Business Leagues, Chambers of Commerce and Real Estate organizations) are permitted to engage in certain kinds of political activities in support of or in opposition to candidates for public office as long as those activities are not their primary activity. The expenses incurred in connection with such political activity are subject to tax in an amount equal to the organization’s net investment income for the year or the amount expended on political campaign activities during the year, whichever is less.⁷

Such organizations may engage in an unlimited amount of lobbying, provided that the lobbying is related to the organization’s exempt purpose. **Remember**, these organizations are prohibited by the Federal Election Campaign Act from “coordinating their communications and related expenditures with a political campaign” for federal office.

Note that 501(c)(3) organizations are permitted to form affiliations with 501(c)(4), (5) and (6) organizations, which may conduct lobbying and political activities. However, 501(c)(4), (5) and (6) organizations are not permitted to accept or use tax-deductible charitable contributions, received by an affiliated 501(c)(3) organization, for those purposes. The chart below, published by the IRS, identifies the various tax consequences of certain income, expenses and activities of 501(c)(4), (5) and (6) organizations and political organizations exempt from taxation pursuant to section 527 of the IRC.⁸

Federal tax law attributes of five common types of tax-exempt organizations	501(c)(3)	501(c)(4)	501(c)(5)	501(c)(6)	527
Receive tax-deductible charitable contributions	YES	NO	NO	NO	NO
Receive contributions or fees deductible as a business expense	YES	YES	YES	YES	NO
Substantially related income exempt from federal income tax	YES	YES	YES	YES	YES
Investment income exempt from federal income tax	LTD*	YES	YES	YES	NO
Engage in legislative advocacy	LTD	YES	YES	YES	LTD
Engage in candidate election advocacy	NO	LTD	LTD	LTD	YES
Engage in public advocacy not related to legislation or election of candidates	YES	YES	YES	YES	LTD

*Private foundations are [subject to tax](#) on their net investment income.

Source: <https://www.irs.gov/charities-non-profits/common-tax-law-restrictions-on-activities-of-exempt-organizations>

⁷ See IRS guidance posted at <https://www.irs.gov/pub/irs-pdf/p4221nc.pdf>

⁸ For information about section 527 organizations, see “Tax Information for Political Organizations,” posted by the IRS at <https://www.irs.gov/charities-non-profits/political-organizations>

Is a 501(c)(3) Organization Permitted to Lobby?

Lobbying is communication with members or employees of a legislative body in support of, in opposition to or in order to propose legislation. According to the IRS, legislation can be any

Under New York State Law, social media may constitute lobbying activity if it is directly sent to a social media account known to be owned or controlled by a public official, it creates a direct electronic link to any social media account known to be owned or controlled by a public official or, it is targeted to a public official's staff with knowledge that the person is a member of the public official's staff.

“action by Congress, any state legislature, any local council, or similar governing body, with respect to acts, bills, resolutions, or similar items (such as legislative confirmation of appointive office), or by the public in referendum, ballot initiative, constitutional amendment, or similar procedure.”

Legislation can be influenced via contact (“direct lobbying”) or urging the public to contact (“grassroots lobbying”) members or employees of a legislative body “for the purpose of proposing, supporting, or opposing legislation.”

Unlike issue advocacy, lobbying is defined narrowly as a communication, with elected officials and staff, about legislation and for the purpose of seeking a vote for or against the legislation. According to the IRS, the following forms of advocacy or communication are not treated as lobbying:

- Nonpartisan analysis and research, public education, and provision of advice to a governmental body in response to a request.
- Grassroots organizing, litigation and communications between the organization and its members with respect to legislation (unless the communication urges the members to lobby).
- Self-defense lobbying (communications to legislators regarding the organization's existence or tax-exempt status).
- Communications with members of the executive branch of government, unless the principal purpose is to influence legislation.⁹

⁹ <https://www.irs.gov/charities-non-profits/lobbying>

A 501(c)(3) organization is permitted to engage in lobbying as long as lobbying does not comprise a “substantial” part of its activities.

Likewise, section 1116(a)(4) of New York’s tax law permits charitable organizations or entities to engage in lobbying as long as lobbying is not “a substantial part of the activities” in which such organizations engage.

This guidance references certain New York State and New York City laws. Organizations in other municipalities and other states should consult the laws of those jurisdictions.

A 501(c)(3) organization may lose its tax-exempt status when a substantial part of its activity involves lobbying. The IRS imposes gradual sanctions. First, an excise tax on the portion of lobbying that was excessive and then, for more serious violations, the loss of exempt status. Private foundations are the exception and are subject to IRS penalties for *any* lobbying activity.

The IRS considers a variety of factors to determine whether the lobbying is a substantial part of an organization’s activities, including the time devoted to the activity and the expenditures spent on the activity.

According to the IRS

“Whether an organization’s attempts to influence legislation, i.e., lobbying, constitute a substantial part of its overall activities is determined on the basis of all the pertinent facts and circumstances in each case. The IRS considers a variety of factors, including the time devoted (by both compensated and volunteer workers) and the expenditures devoted by the organization to the activity, when determining whether the lobbying activity is substantial.

Under the substantial part test, an organization that conducts excessive lobbying in any taxable year may lose its tax-exempt status, resulting in all of its income being subject to tax. In addition, section 501(c)(3) organizations that lose their tax-exempt status due to excessive lobbying, other than churches and private foundations, are subject to an excise tax equal to five percent of their lobbying expenditures for the year in which they cease to qualify for exemption.”¹⁰

However, not all participation in public policy matters is considered lobbying. For example, organizations may conduct educational meetings, prepare and distribute educational materials, or otherwise consider public policy issues in an educational manner, and those activities will not count towards the limit on the amount of lobbying the organization can do that year.

A 501(c)(3) organization may opt out of the “substantial part” test and instead elect to apply the IRC section 501(h) “expenditure test,” a formula designed to set ceilings for different

¹⁰ <https://www.irs.gov/charities-non-profits/measuring-lobbying-substantial-part-test>

lobbying expenditures. The election is available to most 501(c)(3) organizations other than churches and private foundations.

The formula for computing allowable lobbying expensed for organizations that opt for the Internal Revenue Code section 501(h) expenditure test is set forth in the table below.

If the amount of exempt purpose expenditures is:	Lobbying nontaxable amount is:
≤ \$500,000	20% of the exempt purpose expenditures
>\$500,00 but ≤ \$1,000,000	\$100,000 plus 15% of the excess of exempt purpose expenditures over \$500,000
> \$1,000,000 but ≤ \$1,500,000	\$175,000 plus 10% of the excess of exempt purpose expenditures over \$1,000,000
>\$1,500,000 but ≤ \$17,000,000	\$225,000 plus 5% of the exempt purpose expenditures over \$1,500,000
>\$17,000,000	\$1,000,000

*Organizations electing to use the expenditure test must file [Form 5768 PDF](#), Election/Revocation of Election by an Eligible IRC Section 501(c)(3) Organization to Make Expenditures to Influence Legislation, at any time during the tax year for which it is to be effective. The election remains in effect for succeeding years unless it is revoked by the organization. Revocation of the election is effective beginning with the year following the year in which the revocation is filed.*¹¹

New York State and New York City Lobbying Laws May Require Registration and Disclosure but Do Not Limit Lobbying

New York State’s Lobbying Act (Legislative Law Article 1-A) also governs lobbying and

Under New York State Law, social media may constitute lobbying activity if it is directly sent to a social media account known to be owned or controlled by a public official, it creates a direct electronic link to any social media account known to be owned or controlled by a public official or, it is targeted to a public official’s staff with knowledge that the person is a member of the public official’s staff.

may require certain organizations that engage in lobbying to register with and report to New York’s Joint Commission on Public Ethics (“JCOPE”). It does not, however, place a limit on the amount of lobbying that a tax-exempt organization can conduct (see prior section on lobbying above for limitations applicable to tax-exempt organizations). The law’s definition of a lobbyist includes an

organization that engages in lobbying, whether or not the organization is tax-exempt.

¹¹ <https://www.irs.gov/charities-non-profits/measuring-lobbying-activity-expenditure-test>

The New York State law defines lobbying more broadly than the IRS' definition, and includes an attempt to influence:

- The passage or defeat of legislation or resolution by the NYS Assembly or Senate, or a municipal legislature, including the introduction of legislation,
- The approval or disapproval of legislation by the Governor,
- Adoption, rescission or modification of an Executive Order of the Governor,
- Adoption or rejection of a state agency's rule or regulation having the force of law,
- Any determination or outcome relating to procurement or rate making.

Please note that there are many exemptions to the statutory definition of lobbying.¹²

Every lobbyist must file with JCOPE a biennial statement of registration for each calendar year for which the lobbyist expends, incurs, or receives an amount greater than \$5,000 of reportable compensation and expenses for lobbying in New York State. Semi-annual reports must be filed by any client who retains employs, or designates a lobbyist, if such client reasonably anticipates that during the year such client will expend or incur an amount greater than \$5,000 of combined reportable compensation and expenses.

The New York City Council also enacted a lobbying law which defines lobbying as attempting to influence:

- The City Council with regard to local laws,
- The Mayor, in support or opposition of local laws and executive orders,
- The determination by an elected official or officer or employee of the state concerning the procurement of goods or services and
- Determinations concerning zoning or development of real property regulated by the City.¹³

The Administrative Code requires every lobbyist to file with the City Clerk an annual statement of registration for each calendar year for which the lobbyist expends, incurs, or receives an amount greater than \$5,000 of reportable compensation and expenses for lobbying in New York City. An annual report must be filed with the City Clerk by any client who retains, employs, or designates a lobbyist, if during the year such client expended, received, or incurred greater than \$5,000 of combined reportable compensation or expenses.

¹² See NY Legislative Law, Article 1-A for full definition of lobbying and exceptions to the rule.

¹³ See New York City Administrative Code, Sections 3-211-223 and Title 51 of the Rules of the City of New York Sections 1-01-08 for a full definition of lobbying and exceptions to the rule.

How Does Issue Advocacy Differ from Political Campaign Intervention?

A 501(c)(3) organization may advocate for or against issues that are related to the organization's mission, even if the issues divide candidates in an election, as long as that advocacy is not used as an "end run" around the prohibition against political activity. For example, if the advocacy concerns a major issue in an election campaign, advocating for or against it might be viewed as a proxy for support of or opposition to a particular candidate, depending on whether the issue campaign coincides with election season, the organization's history of advocacy on that issue, and other factors.

RESOURCES

IRS Social Welfare Organizations Explained

<https://www.irs.gov/charities-non-profits/other-non-profits/social-welfare-organizations>

IRS, Compliance Guide for 501(c)(3) Public Charities

<https://www.irs.gov/pub/irs-pdf/p4221pc.pdf>

IRS, Compliance Guide for Tax-Exempt Organizations (Other than 501(c)(3) Public Charities and Private Foundations)

<https://www.irs.gov/pub/irs-pdf/p4221nc.pdf>

IRS, Publication 557, Updated Guide for Tax-Exempt Status

<https://www.irs.gov/pub/irs-pdf/p557.pdf>

IRS, Restriction of Political Campaign Intervention by Section 501(c)(3) Tax-Exempt Organizations

<https://www.irs.gov/charities-non-profits/charitable-organizations/the-restriction-of-political-campaign-intervention-by-section-501c3-tax-exempt-organizations>

IRS, Revenue Ruling 2007-41, 2007-25 I.R.B. (June 18, 2007) – Over 20 fact patterns and examples of organizations that have – or have not – engaged in prohibited political activity.

<https://www.irs.gov/pub/irs-drop/rr-07-41.pdf>

IRS Fact Sheet, Election Year Activities and the Prohibition on Political Campaign Intervention for Section 501(c)(3) Organizations

<https://www.irs.gov/pub/irs-news/fs-06-17.pdf>

Political Campaigns and Charities: The Ban on Political Campaign Intervention – IRS online “mini-course” for 501(c)(3) organizations.

<https://www.stayexempt.irs.gov/home/existing-organizations/political-campaigns-and-charities>

IRS, Small to Mid-Size 501(c)(3) Tax Exempt Organization Workshop

<https://www.stayexempt.irs.gov/home/resource-library/virtual-small-mid-size-tax-exempt-organization-workshop>

JCOPE, Lobbying Overview Training

<https://jcope.ny.gov/lobbying-overview-training>

NYC Office of the City Clerk, Lobbying Bureau

<https://www.cityclerk.nyc.gov/content/lobbying-bureau>

NYC Office of the City Clerk, What Constitutes Lobbying FAQ

<https://www.cityclerk.nyc.gov/content/lobbying-frequently-asked-questions/lobbying-activities>

Additional guidance for charities as well as information about registration and annual financial filings are posted at www.charitiesnys.com