



VOTER EDUCATION BY NONPROFITS DURING A POLITICAL CAMPAIGN

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Nonprofits sometimes confuse working for the election of a political candidate with lobbying. These two kinds of activity are in fact very different. It is perfectly legal (and highly appropriate) for a nonprofit to work for the passage of a particular piece of legislation, during a political campaign or at any other time. Working for the election of a particular candidate, however, whether at federal, state, or local levels is strictly prohibited and is cause for the nonprofit to lose its tax-exempt status. While a 501(c)(3) group cannot work on behalf of or against candidates, there are a number of other voter education activities, such as those described below, that it can legally engage in. If you plan to engage in any of the following activities, consult a nonprofit law attorney for further guidance.

ELECTIONEERING

A 501(c)(3) organization cannot endorse, contribute to, work for, or otherwise support a candidate for public office, nor can it oppose one. This in no way prohibits officers, individual members, or employees from participating in a political campaign, provided that they say or do everything as private citizens and not as spokespersons for the organization or while using the organization's resources.

QUESTIONNAIRES

Nonprofits with a broad range of concerns can safely disseminate responses from questionnaires. The questions must cover a broad range of subjects, be framed without bias, and be given to all candidates for office. If a nonprofit has a very narrow focus, however, questionnaires may pose a problem. The IRS takes the position that a nonprofit's narrowness of focus implies endorsement of candidates whose replies are favorable to the

questions posed. The same applies when candidates are asked to respond to a nonprofit's position paper. Unless you are certain that your organization clearly qualifies as covering a broad range of issues, your organization should avoid disseminating replies from questionnaires.

VOTING RECORDS

Many nonprofits follow the useful practice of telling their members how each member of a legislature has (*over*) voted on a key issue. There is no legal problem with this practice provided that if the information is presented and disseminated during the campaign it is done in the same manner as it is at other times. A problem arises if an organization waits to disseminate voting records until a campaign is under way. If your organization has followed the practice of disseminating voting records as votes occur throughout the year, then you are safe in publishing the record of a vote that occurs during a campaign. If,

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however, your organization has not published the records regularly throughout the year, your group may not, during the campaign, publish a recap of the legislative votes throughout the legislative session. That is permissible, however, after the election.

PUBLIC FORUMS

Nonprofits may invite candidates to meetings or to public forums sponsored by the organizations. The invitation must be extended to “all serious candidates.”

It is best to write to them all simultaneously and to use identical language in the invitations. It is not necessary that all candidates attend.

Even-handedness must be maintained in promoting and holding such a meeting or forum. The nonprofit should not state its views or comment on those of the candidates. If there is a question-and-answer period, each candidate must be given an equal opportunity to answer questions, and the moderator should strive to ensure balance. Speeches or other remarks by candidates at the forum may be published as news items in the nonprofit’s newsletter, if it is published regularly and if its circulation is limited to the organization’s normal distribution patterns.

TESTIMONY ON PARTY PLATFORMS

As part of a lobbying effort, nonprofits may testify before party platform committees at the national, state, or local levels. Responses to testimony may be reported in regularly published newsletters. Both parties’ platform committees should receive copies of the

testimony. Any account of the testimony and responses may be reported in the nonprofit’s regularly scheduled publication.

ISSUE BRIEFINGS AND CANDIDATES’ STATEMENTS

Issue briefings for candidates must be extended to all the candidates running for a particular office. A candidate may publish a position paper or statement on the issue, but a nonprofit may not circulate the candidate’s statement to the media, the general public, or the nonprofit’s members until after the election.

MEMBERSHIP LISTS

The nonprofit may sell, trade, or rent its list to others, including candidates for office. If it does so, all candidates must be aware of the opportunity and be given the same access. An organization that gives or lends its membership list to a candidate is in effect making an illegal campaign contribution. To stay within the law, the group must be paid fair value in return.

The foregoing information is for general guidance and is not intended to replace legal counsel.