

Lobbying and Election Activity

Guiding Principles for Nonprofit Providers - Part 1



As another election cycle approaches, many in the nonprofit community are concerned about what they can and cannot do under IRS guidelines with respect to political candidates and issues. Following two core principles will help keep you in compliance with the tax laws and out of trouble with the IRS.

No Intervention in Election Campaigns:

Tax-exempt organizations may not advocate either for or against any political candidate's campaign for public office. Your organization may not endorse a candidate, contribute to a campaign financially, issue statements on behalf of or in opposition to a candidate, distribute statements others have written for or against a candidate, or allow its facilities or other assets to be used by a candidate unless all candidates are given similar opportunities.

People who work for tax-exempt organizations do not lose all their rights of citizenship, but any campaign activity you personally may want to undertake has to be done completely apart from your organization.

If, for example, you speak or write on behalf of a candidate, you must do it under your own name and on your own time and expense, not representing your organization, involving your staff, or using your organization's computer system, telephones, donor lists, or other assets. Since your staff's activities within the facility and during working hours are attributable to your organization, they need to be familiar and comply with these restrictions as well.

Similarly, your organization's website, newsletter and other communications media must be free of any items endorsing or opposing a candidate.

Any Politically-Related Activity Must Be Nonpartisan:

Tax-exempt organizations may help people register to vote, get to a polling place, and educate themselves on those who are running for office. Especially because many of the people we serve may have mobility or other issues that prevent them from getting out on their own to vote or hear from the candidates, senior housing and long-term care facilities frequently assist their residents in these ways.

However, all of these activities must be completely nonpartisan, not favoring any one candidate over others. For example, nonprofit facilities may hold candidate forums for their residents to hear from those who are running for office as long as all candidates are invited and given equal time to speak, the organization makes it clear that it does not favor or oppose any of the candidates, and no fundraising occurs. Not every candidate has to attend in order for the function to proceed, but it must be explained at the function that all candidates were invited and any absences must be noted in a neutral manner. Invitations should be in writing to offer as proof should any questions arise.

Also, facilities may provide transportation to polling places as long as the service is provided on an equal basis to all residents and no distinction is made according to which candidate a resident may support.

If a facility distributes materials such as voter guides to residents, the material must be unbiased and nonpartisan, even if it has been prepared by outside groups.

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Keeping events nonpartisan when they involve a public official who is running for reelection requires extra precaution. For example, we generally encourage LeadingAge members to invite legislators to visit their facilities in order to meet the residents and staff and discuss issues of importance with them. This year, however, all House members and one-third of the senators are running for reelection. If your member of Congress comes in to speak to a group of your residents, you and the legislator must avoid mentioning his/her campaign for reelection. Otherwise the event becomes campaign-related, and the legislator's opponent(s) will have to be invited in to speak to the residents as well.

You and your staff must avoid even the appearance of attempting to influence residents to support or oppose any candidate.

Following these principles of non-intervention in campaigns and nonpartisanship may help you avoid jeopardizing your tax-exempt status.

Additional Information from the IRS Website

- [Examples of activities that are and are not permissible.](#)
- [FAQs](#) on the ban on political campaign activities by tax-exempt organizations.
- [Published guidance on political campaign activity of 501\(c\)\(3\) organizations](#), which includes:
 - [IRS Revenue Ruling 2007-41 \(PDF\)](#), which explores many common factual scenarios.

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Overview

This guidance is intended to help LeadingAge members answer the following questions regarding advocacy, lobbying and prohibited campaign intervention:

- Can providers advocate for issues or lobby during election season?
- Can nonprofit organizations support ballot initiatives?
- Can residents of communities host candidate forums or fundraisers?

Issue Advocacy, Lobbying, and Grassroots Lobbying

Under IRS guidelines, Section 501(c)(3) tax-exempt organizations “may take positions on public policy issues, including issues that divide candidates in an election for public office.” Such actions could include advocacy, lobbying, or public education activities. Organizations can continue to advocate and lobby on issues during the election season, but they must avoid intervention in a political campaign– i.e. if the advocacy appears to clearly favor or oppose one candidate over another.

Advocacy is a broad term that covers all activities that seek to support or defeat a cause or proposal.

One form of advocacy is lobbying, which is activities that attempt to influence specific legislation. The IRS defines direct lobbying as any attempt to influence any legislation through communication with a legislator, an employee of a legislative body or other government official who participates in formulating legislation.

Grassroots lobbying refers to attempts to influence legislation by attempting to affect the opinion of the public with respect to the legislation and encouraging the audience to take action with respect to the legislation. In either case, the communications must refer to and reflect a view on specific legislation.

Tax-exempt 501(c)(3) organizations are permitted to engage in lobbying activities, so long as those activities represent an “insubstantial” part of their overall activities. LeadingAge members, although involved in lobbying and grassroots lobbying, would not likely have such activities represent a substantial part of their overall activities.

Read [more information](#) on lobbying and how to measure lobbying activities.

Issue advocacy is form of advocacy that includes public support for or opposition to a particular cause or policy, but without a specific call to action on a piece of legislation or identifying a candidate for elected office. Organizations may engage in unlimited issue advocacy as long as it does not constitute political campaign activity or fall within the definition of lobbying.

The IRS relies on a “facts and circumstances” test to determine if advocacy initiatives are political campaign intervention. Key factors the IRS reviews in determining whether a communication results in political campaign intervention include the following:

- Whether the statement identifies one or more candidates for a given public office.
- Whether the statement expresses approval or disapproval for one or more candidates’ positions and/or actions.
- Whether the statement makes reference to voting or an election.

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- Whether the statement is delivered close in time to the election.
- Whether the issue addressed in the communication has been raised as an issue distinguishing candidates for a given office.
- 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.
- Whether the timing of the communication and identification of the candidate are 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 office.

When communicating on specific advocacy issues during the election cycles, organizations should avoid making direct references to a specific candidate or voting in an upcoming election. As the factors above suggest, the IRS will view all communications in context before determining whether an action constitutes prohibited campaign intervention.

For more information see the scenarios discussed in IRS Revenue Ruling 2007-41 (Situations 14 – 16).

Ballot Measures

501(c)(3) organizations may work for or against ballot initiatives – up to normal lobbying limits. The IRS views such actions as a lobbying activity, not intervention in a political campaign because these efforts are attempting to influence a proposed policy or law and not the election of a candidate for a political office.

Organizations can also provide neutral public education on ballot initiatives explaining what a yes or no vote would mean.

Resident Issues and Political Campaign Intervention

Senior living providers are in a unique situation compared to other 501(c)(3) entities because they provide housing for residents who live in their tax-exempt organization. These residents have rights to express their political beliefs, but these rights need to be balanced with the organization's tax-exempt requirements to not participate in or intervene in any political campaign.

Again, all of the facts and circumstances will be analyzed to determine whether an organization is participating or intervening, directly or indirectly, in any political campaign on behalf of or in opposition to any candidate for public office. This is a tricky analysis when dealing with resident issues around election season.

Public Forums

The presentation of public forums or debates is a recognized method of educating the public. Providing a forum for candidates is not prohibited political activity provided that it is operated in a nonpartisan manner and does not show a preference or bias for or against a candidate.

The IRS has expressed some criteria or factors to consider when hosting a candidate forum, so it might be advisable if the organization organized and hosted the event so that these guidelines can be followed. If the residents are

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allowed to host the forum, they need to understand these guidelines so that the organization is not accused of political campaign intervention.

The IRS notes that when an organization invites candidates for the same office to speak at a public forum, factors in determining whether the forum results in political campaign intervention include the following:

- Whether questions for the candidates are prepared and presented by an independent nonpartisan panel.
- Whether the topics discussed by the candidates cover a broad range of issues that the candidates would address if elected to the office sought and are of interest to the public.
- Whether each candidate is given an equal opportunity to present his or her view on each of the issues discussed.
- Whether the candidates are asked to agree or disagree with positions, agendas, platforms or statements of the organization.
- Whether a moderator comments on the questions or otherwise implies approval or disapproval of the candidates.

Candidate forums are clearly permissible if done in a nonpartisan way and provide a great way for residents to hear from candidates on a variety of issues important to them. Organizations and their residents must understand how the candidate forums should be conducted so as not to jeopardize the organization's tax-exempt status with allegations of political campaign intervention.

Fundraisers

Often residents or candidates will approach a provider and inquire about hosting a fundraiser for a candidate for political office. These requests often involve hosting the fundraiser in either the resident's apartment or a public area or room of the community.

Fundraisers in the resident's apartment may be allowed provided it is clear that the organization is not involved and it is clear as a tax-exempt organization it is nonpartisan and committed to not intervening in political campaigns. If the organization allows fundraisers in resident apartments the organization should have a policy that these gatherings must follow all current community policies and rules regarding use of the apartments, including number of guests, fire policies, no-solicitation policies, etc.

Fundraising requests in the common areas provide similar issues in that providers may rent out rooms in the organizations provided that they are equally available to all candidates and the room is rented out for similar terms (cost and conditions). Providers, however, are not mandated to rent out public areas or rooms for fundraisers as organizations may want to have a policy in place to avoid any appearance of partisanship or political campaign intervention.

If they choose to allow such events, the organization must make clear (in their policies and any marketing materials used to promote the event, whether drafted by the organization or residents) that the organization is a nonpartisan tax-exempt entity and is not participating, endorsing or taking a side in any such activity. Each community may

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decide on what types of activity it will allow based on their unique circumstances, but if they allow such activities they should develop policies that are nonpartisan and help protect the organization from any appearance of political campaign intervention.

Political Signs

Residents often make requests to exhibit signs in favor of political candidates. Many organizations ban signs in apartment windows, which applies to all signage in outward facing windows, and in interior hallways. If communities do allow signs, they need to establish policies, which might include guidelines for size, placement, and time restrictions.

Also, the organization needs to express that it remains nonpartisan and is not endorsing or opposing a candidate for political office. Having policies and procedures in place will be one of the many factors the IRS analyzes whether any activity constitutes prohibited political campaign intervention.

Nonprofit aging service providers and their residents are encouraged to participate in the political process and exercise their rights but need to be mindful of the rules in place prohibiting 501(c)(3) organizations from intervening in political campaigns.

Review IRS Revenue Ruling 2007-41 for additional examples regarding issue advocacy, voter education, actions of organization leaders, candidate appearances, and websites.

Resources and Additional Information from the IRS Website

- [FAQs](#) on the ban on political campaign activities by tax-exempt organizations.
- [Published guidance on political campaign activity of 501\(c\)\(3\) organizations](#), which includes:
 - [IRS Revenue Ruling 2007-41 \(PDF\)](#), which explores many common factual scenarios.
- [IRS Information on Lobbying and Measuring Lobbying Activity](#)