

Recent Tax-Exemption Denials Demonstrate IRS Views on Political Campaign Intervention

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The Internal Revenue Service (IRS) recently denied tax-exemption under Section 501(c)(3) to two applicants, in part because their activities involved political campaign intervention. These denials offer insight into where the IRS draws the line between nonpartisan and political activities, providing helpful guidance for 501(c)(3) charitable organizations that are strictly prohibited from conducting any political campaign activities as well as 501(c)(4) social welfare organizations and 501(c)(6) trade associations that may conduct a limited amount of political campaign activities.

Primarily inviting one political party's candidates to speak at events. Inviting political candidates to speak at an organization's events in their capacities as candidates is generally not a political campaign activity if the organization provides an equal opportunity for other candidates seeking the same offices to speak at the event, no fundraising occurs, and the organization otherwise does not indicate any support for or opposition to the candidate in its communications about the event or during the event. (It is worth noting, however, that such events could nevertheless present campaign finance issues depending on the relevant jurisdiction's laws.) In one of the denials, the applicant invited 15 candidates to speak at the organization's meetings and 13 of the candidates were from one political party. Because the applicant did not demonstrate that it provided an equal opportunity for other candidates seeking the same offices to speak at its meetings, and otherwise did not demonstrate the educational purpose of the candidate appearances, the IRS determined that the applicant intervened on behalf of political candidates. This suggests that primarily inviting one political party's candidates to speak at events in their capacities as

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candidates could be sufficient to transform the events into political campaign activities absent documentation that the sponsoring organization provided an equal opportunity to competing candidates to speak at the events.

Linking to political candidates' campaign websites. Links to campaign websites and other candidate-related materials are not per se political campaign activities. However, one of the applicants included a link on its website to a political event featuring a current Senator and current Senatorial candidate. The applicant did not link to any other candidates' websites or events. Similar to inviting primarily one political party's candidates to speak at events, the IRS determined that the link also constituted political campaign intervention because not all candidates for the office were equally represented and the applicant did not explain how including the link furthered a 501(c)(3) purpose. Although including a hyperlink on an organization's website or in social media posts may seem harmless, this denial demonstrates that the IRS evaluates organizations' digital activities as much as their physical activities.

Conducting GOTV programs in a partisan manner. 501(c)(3) organizations are permitted to sponsor voter registration and get-out-the-vote (GOTV) programs as long as the programs are conducted in a nonpartisan, neutral manner and do not favor a political party or candidate. In one of the denials, the applicant's meeting minutes indicated that its GOTV program would focus on turning out voters belonging to one political party or affiliated with a particular ideological issue group. The IRS determined that the applicant's GOTV program was conducted in a partisan manner by targeting voters who tended to support one political party's candidates and, accordingly, constituted political campaign intervention. Although this has been a long-standing IRS position, it is a good reminder that organizations conducting nonpartisan voter registration and GOTV programs should adequately document that these programs were, in fact, conducted in a nonpartisan manner.

Using political jargon to describe activities. One of the applicants planned to conduct a variety of election-related activities, including educating voters and hosting candidate forums or debates. A 501(c)(3) organization may only conduct these activities if they are carried out in a nonpartisan manner. Not only did the applicant fail to describe how it planned to conduct these activities in a nonpartisan manner, but the applicant also used political jargon to describe these election-related activities. For example, the title of a program was "Political Activism Begins Outside the Box," it listed a purpose as "becoming the place for political action, ideas, education and camaraderie," and it explained its intent of educating voters was "always playing to win." The applicant may very well have intended to conduct its election-related activities in a nonpartisan manner, but the IRS found this political language to be problematic and an indication that the activities would result in political campaign intervention. How an organization describes its activities is just as important as how it actually conducts its activities.