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Summary of IRS Guidance on Election Year Activities for Section 501(c)(3) Organizations

In June 2007, the Internal Revenue Service released a revenue ruling (Rev. Rul. 2007-41) to help 501(c)(3) organizations stay in compliance with political intervention rules. The guidance focuses on problems that the IRS observed in past election cycles and is intended to help organizations understand what they can and cannot do when the election season is under way. Below are excerpts from the guidance. The full document, including 21 fact situations, is available on the IRS website at: <http://www.irs.gov/pub/irs-drop/rr-07-41.pdf>

The Prohibition on Political Campaign Intervention

Under the Internal Revenue Code, all section 501(c)(3) organizations are prohibited from directly or indirectly participating in, or intervening in, any political campaign on behalf of (or in opposition to) any candidate for elective public office. The prohibition applies to all campaigns including campaigns at the federal, state and local level. Violation of this prohibition may result in denial or revocation of tax-exempt status and the imposition of certain excise taxes. Private foundations are subject to additional restrictions that are not described in this guidance.

501(c)(3) organizations may engage in nonpartisan activities to promote voter registration, encourage voter participation, and provide voter education, as long as these activities do not favor or oppose a candidate for public office. 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 depends upon all of the facts and circumstances of each case.

Voter Education, Voter Registration and Get Out the Vote Drives

501(c)(3)s are permitted to conduct certain voter education activities (including public forums and voter education guides), voter registration, and get-out-the-vote drives, if they are carried out in a non-partisan manner. Activities conducted in a biased manner that favors (or opposes) one or more candidates is prohibited.

Individual Activity by Organization Leaders

The political campaign intervention prohibition is not intended to restrict free expression on political matters by leaders of organizations speaking for themselves, as individuals. Nor are leaders prohibited from speaking about important issues of public policy. However, for their organizations to remain tax exempt under section 501(c)(3), leaders cannot make partisan comments in official organization publications or at official functions of the organization.

Candidate Appearances

Depending on the facts and circumstances, an organization may invite political candidates to speak at its events without jeopardizing its tax-exempt status. Political candidates may be

invited in their capacity as candidates, or in their individual capacity (not as a candidate). When a candidate is invited to speak at an organization event as a political candidate, factors in determining whether the organization participated or intervened in a political campaign include the following:

- Whether the organization provides an equal opportunity to political candidates seeking the same office;
- Whether the organization indicates any support for or opposition to the candidate (including candidate introductions and communications concerning the candidate's attendance); and
- Whether any political fundraising occurs.

Public Forums with Several Candidates

When an organization invites several candidates for the same office to speak at a public forum, factors in determining whether the forum results in political campaign interventions include the following:

- Whether questions for the candidate 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 the issues discussed,
- Whether the candidates are asked to agree or disagree with positions, agendas, platforms or statements of the organization, and
- Whether a moderator comments on the questions or otherwise implies approval or disapproval of the candidates.

Speaking or Participating as a Non-Candidate

Candidates may also appear or speak at organization events in a non-candidate capacity. For instance, a political candidate may be a public figure who is invited to speak because he or she: (a) currently holds, or formerly held, public office; (b) is considered an expert in a non political field; or (c) is a celebrity or has led a distinguished military, legal, or public service career. A candidate may choose to attend an event that is open to the public, such as a lecture, concert or worship service. The candidate's presence at an organization-sponsored event does not, by itself, cause the organization to be engaged in political campaign intervention. However, if the candidate is publicly recognized by the organization, or if the candidate is invited to speak, factors in determining whether the candidate's appearance results in political campaign intervention include the following:

- Whether the individual is chosen to speak solely for reasons other than candidacy for public office;
- Whether the individual speaks only in a non-candidate capacity;
- Whether either the individual nor any representative of the organization makes any mention of his or her candidacy or the election;
- Whether any campaign activity occurs in connection with the candidate's attendance;
- Whether the organization maintains a nonpartisan atmosphere on the premises or at the event where the candidate is present; and
- Whether the organization clearly indicates the capacity in which the candidate is appearing and does not mention the individual's political candidacy or the upcoming election in the communications announcing the candidate's attendance at the event.

Issue Advocacy vs. Political Campaign Intervention

Section 501(c)(3) organizations may take positions on public policy issues; however they must avoid any message favoring or opposing a candidate. All the facts and circumstances need to be considered to determine if the advocacy is political campaign intervention including these key factors:

- 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 is delivered close in time to the election;
- Whether the statement makes reference to voting or an 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; and
- 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.

Voter Guides (from IRS Fact Sheet 2006-17)

Preparing or distributing a voter guide that compares candidates' positions on a set of issues may violate the prohibition against political campaign intervention if the guide focuses on a single issue or narrow range of issues; if the questions are structured to reflect bias; or if the organization's position on one or more issues is set out in the guide so that it can be compared to the candidates' positions. The following factors are key considerations in evaluating a voter guide:

- Whether the questions and any other description of the issues are clear and unbiased in both their structure and content.
- Whether the questions posed provided to the candidates are identical to those included in the voter guide.
- Whether the candidates are given a reasonable amount of time to respond to the questions. If the candidate is given limited choices for an answer to a question (e.g. yes/no, support/oppose), whether the candidate is also given a reasonable opportunity to explain his position in his own words and that explanation is included in the voter guide.
- Whether the answers in the voter guide are those provided by the candidates in response to the questions, including whether the candidate's answers are unedited, and whether they appear in close proximity to the question to which they respond.
- Whether all candidates for a particular office are covered.
- Whether the number of questions, and the subjects covered, are sufficient to encompass most major issues of interest to the entire electorate.

Business Activity

Business activity of an organization, such as selling or renting of mailing lists, the leasing of office space, or the acceptance of paid political advertising could constitute participation or intervention in a political campaign depending on the context. Some of the factors to be considered include:

- Whether the good, service or facility is available to candidates in the same election on an equal basis,
- Whether the good, service, or facility is available only to candidates and not to the general public,
- Whether the fees charged to candidates are at the organization's customary and usual rates, and
- Whether the activity is an ongoing activity of the organization or whether it is conducted only for a particular candidate.

Web Sites

If an organization posts something on its web site that favors or opposes a candidate for public office, the organization will be treated the same as if it distributed printed material, oral statements or broadcasts that favored or opposed a candidate. When an organization establishes a link to another web site, the organization is responsible for the consequences of establishing and maintaining that link, even if it does not have control over the content of the linked site. Because the linked content may change over time, an organization may reduce the risk of political campaign intervention by monitoring the linked content and adjusting the links accordingly.

Links to candidate-related material, by themselves, do not necessarily constitute political campaign intervention. The IRS will take all the facts and circumstances into account including, but not limited to, the context for the link on the organization's web site, whether all candidates are represented, any exempt purpose served by offering the link, and the directness of the links between the organization's web site and the web page that contains material favoring or opposing a candidate for public office.