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Policy Action Network Issue Briefing – June 16, 2006 **Issue Advocacy & Electioneering**

Jim Hudson, program director at the Center for Lobbying in the Public Interest and Mary Rouvelas, associate corporation counsel at the American Cancer Society joined the call to discuss the distinction between issue advocacy and electioneering.

OVERVIEW

Jim Hudson, Center for Lobbying in the Public Interest

- Advocacy is the broad umbrella under which falls lobbying, judicial activism, media outreach, broad discussions of social issues and electoral advocacy.
- A critical thing to note about the Internal Revenue Service's investigation of charities' compliance with the ban on electioneering is that there are over one million nonprofits in the nation. The IRS received about 100-150 allegations of nonprofits engaging in prohibited activity, chose to investigate just 82 of those complaints and found violations in only three-quarters of the groups it investigated (about 70). The overwhelming majority of nonprofits in the country were in compliance with the law.
- The violations related to direct support or opposition of a candidate and included:
 - Charities distributing materials that endorsed candidates;
 - Charities encouraging their members to vote for a particular candidate;
 - Religious leaders endorsing or opposing candidates from the pulpit;
 - Using websites or web links to endorse or oppose candidates, including links to candidates' sites;
 - Distributing biased voter guides or candidate ratings that endorsed or opposed candidates;
 - Placing candidate signs on property;
 - Inviting selected candidates to events and/or showing bias in allowing candidate appearances; and
 - Making cash contributions to candidates' political campaigns.
- There are many permissible election-related activities that nonprofits can undertake such as voter education, voter registration, public forums and GOTV work, but it must remain neutral, non-ideological and unbiased in the presentation of issues, candidates and in voter education drives.
- Keep, as backup, data and justification that explain the process used for deciding which issues and activities your group pursues in an election cycle. It is permissible to conduct activities that are in line with your organization's focus: you may focus on the group's traditional issues; you may work to increase voter turnout in areas with traditionally low participation and you may work to increase voter registration rates in underrepresented areas.
- An organization's election-related work shouldn't focus on issues that attract candidates or voters from only one party or one ideological slant.

- Voter pamphlets must also be unbiased and should not compare your organization's position to the candidate's position.
- Candidate events, such as debates or forums, must include all candidates, giving them equal opportunities to be heard using a non-biased moderator. It is permissible to discuss your organization's issue, but it should be done in the context of a discussion of broader issues. Ask about more specific issues as follow-up questions.
- Don't name a candidate in statements or ads in conjunction with an issue, particularly if it's close to an election or if the issue you raise is a stand-alone issue and not something you usually cover. Don't say, "Candidate 'x' has been pushing for legislative bill 2 and it will decimate our organization." You can, however, mention lawmakers' names, if it's done for identification purposes or if listing the bill sponsor's name is relevant.

Mary Rouvelas, American Cancer Society

- In 2000, the American Cancer Society ran the "Campaign Against Cancer." As a 501 (c)(3) charity, they worked closely with outside counsel to ensure adherence to the law and recommend that other nonprofits do the same in planning their election-related activities.
- The IRS uses its facts and circumstances test to assess potential violations and assesses:
 - The content of the communication – what is said;
 - The timing – when it's said; and
 - The distribution – to whom is the message delivered?
- The American Cancer Society wanted to educate the candidates about cancer as a public policy issue; make it a priority for the presidential candidates in particular; educate them about the incidences of cancer; the importance of the issue to voters and the need for federal policies to address the problem.
- Their volunteers raised questions at town hall meetings and participated on radio broadcasts. The Cancer Society also used paid media ads, op-eds, held individual meetings with candidates and wrote letters to candidates.
- They established internal guidelines to ensure that the organization treated candidates equally and used objective criteria to narrow the field for candidate invitations and forums (e.g., including only candidates for a party that received 10% of the vote). They also gave candidates the same information and materials and met with them in the same manner.
- The American Cancer Society took a conservative approach to its work:
 - They did not publish candidates' views on issues to the public or their volunteers;
 - They structured their candidate questions very carefully;
 - They didn't ask for public pledges from candidates for example: they wouldn't ask if a candidate supported an additional tax on tobacco products, but they would ask what the candidate would do about cancer;
 - They did not compile or publish an evaluation of candidates' responses to forum questions; and
 - They used their volunteers carefully and provided them with extensive training on the limits of the law: how to lobby the candidates, how to tell their story and how meetings should flow, etc.

- The staff and volunteers felt limited in what they could do and say as a 501 (c)(3) charity, which was part of ACS's consideration for establishing the 501 (c)(4) American Cancer Society Cancer Action Network. All of the Cancer Society's electoral advocacy work now is done through the Network – it's harder to fundraise for (c)(4)'s, but it's safer for the organization's election-related work.
- The Bi-Partisan Campaign Reform Act and Federal Election Commission law adds additional layers of concern and complication – make sure you're aware of all legal requirements.

DISCUSSION

Forums

- If an organization's stand on an issue is clear, questions to the candidate mustn't be phrased in a way where the candidate's response would agree or disagree with the organization's stated position. Instead, ask a broad question first, which can then be followed with a more specific question that gets closer to the information you're seeking.
- Don't phrase a question in a way that sounds like you're asking the candidate for a public pledge or commitment.
- Include a broad range of issues and include questions that the official could encounter in their day to day work.
- Ask more specific, pointed questions in a private meeting with the candidate, which would be a permitted lobbying communication. One-on-one discussion with the candidate lays the ground work for establishing future access. It also establishes your organization as a leader in the community on the issues you discuss with the candidate.
- It is permissible for members of your organization to attend other groups' forums and ask more specific, pointed questions as individuals, but not as representatives of your group. That person should not appear to represent or speak for your group or wear your organization's paraphernalia. C3s can encourage others to attend, but can not promote or oppose a candidate in any way. The guidelines are not intended to chill an individual's speech.
- Staff at 501 (c)(3) organizations are not allowed to spend money developing more pointed forum questions for volunteers who attend other groups' forums, because your group would then be spending money on a prohibited activity. The staff should not draft questions that the organization cannot itself ask. The Cancer Society also has guidelines that spell out the rules against using the organization's resources if, as an individual, an employee volunteers for candidates or runs for elected office.

Candidate Appearances

- Without exception, nonprofits must invite all candidates when holding election-related events. When holding events that are not related to an election, it is permissible to invite a recognized expert who happens to be a candidate and not invite other candidates, but the reason for the invitation must be made clear and documented. Include a disclaimer in the invitation that the person is being invited in their position as a legislator or as an expert in a particular subject matter and should

refrain from campaigning. It's also advisable to issue a disclaimer at the beginning of events clarifying that the organization does not support or oppose candidates (*see disclaimer language, under 'Other Information' below*).

- The timing of inviting selected candidates to non-election-related events is more sensitive in some races than others – a sleepy state senate race would be considered differently by the IRS than a presidential election. The IRS would use its facts and circumstances test in such an instance to determine if an organization has engaged in electioneering by inviting only selected candidates (how much attention the race has received and whether or not the media covers it extensively, e.g.).
- It is permissible to mention in press releases or newsletters that legislators who are running for office have visited your organization as long as it's made clear that the legislator attended in a non-candidate capacity.

Presenting Candidates at Forums and on Questionnaires

- If only one candidate responds to a questionnaire, find another way to present the information.
- Unlike (c)(4)s, (c)(3) organizations should not host “empty chair” forums if only one candidate is able to attend. If proceeding with the forum is unavoidable (a last minute cancellation from a candidate, for example), clearly document the reasons for the unbalanced appearance. In that case, consider holding a separate forum on another day for the other candidate who is unavailable to attend on the scheduled day. FEC rules prohibit the event if only one candidate attends.

Linking to Other Sites

- (c)(3) groups should not link to a (c)(4) site that includes a candidate endorsement. A (c)(3) can, however, link to a (c)(4) for purposes of providing information that supports the (c)(3)'s mission.

OTHER INFORMATION:

- American Cancer Society's Disclaimer Language:

Please note that [*name of organization*] is a public charity organized under section 501(c)(3) of the Internal Revenue Code. We may not engage in activities that appear to support or oppose any candidate for public office. Thus no candidate for public office who agrees to appear at an event may consider his or her participation at the event as support for their candidacy. Because this is not an election-related appearance, we ask that you not refer to your candidacy or any pending election. Campaign literature may not be distributed by you, your staff, or any volunteers, and no campaign contributions may be solicited or accepted at an event.

- [Fact Sheet FS-2006-17](#), February 2006 Open Comment Period:

The IRS considers the fact sheet to be a living document, which may be revised in response to future developments and feedback. The IRS is encouraging comments on the fact sheet. These comments can include suggestions on the underlying provisions and/or their implementation and enforcement.

Mail comments to the following addresses:

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