

SILK, ADLER & COLVIN

A LAW CORPORATION

THOMAS SILK
BETSY BUCHALTER ADLER
GREGORY L. COLVIN
ROSEMARY E. FEI
ROBERT A. WEXLER
ERIK DRYBURGH
INGRID MITTERMAIER

235 MONTGOMERY STREET
RUSS BUILDING, SUITE 1220
SAN FRANCISCO, CALIFORNIA 94104
TEL: (415) 421-7555
FAX: (415) 421-0712
WWW.SILKLAW.COM
WRITER'S E-MAIL: ANDERSON@SILKLAW.COM

Guidelines for Candidate Campaign Activity by Individuals Associated with a 501(c)(3) Charity

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Charities exempt from taxation under Section 501(c)(3) of the Internal Revenue Code are prohibited from “participating or intervening” in any political campaign involving a candidate for public office, at the risk of losing their tax exemption. However, officers, directors and staff of a charity do not lose their First Amendment rights to engage in political activities just because of their affiliation with the charity. They may freely do so personally, as long as their actions are not attributed to the charity by the IRS.

How would the IRS determine whether an individual is truly involved in a campaign only in an individual capacity, or instead is acting on behalf of a charity? The IRS will review all the facts and circumstances and consider whether the individual appears to have acted as an agent for the charity, taking the view that a charity’s involvement may be direct or indirect, explicit or implicit. Thus, if the charity has authorized or ratified an individual’s political acts, those acts will be attributed to the charity.

There is little precedential guidance in this area, but what there is, together with non-precedential commentary on these issues from the IRS, suggests the following guidelines.

1. Use of charity resources.

- *Do not* use charity facilities or resources for campaign work, including, for example, bulk mailing accounts, distribution lists or other charity assets.
- *Do not* increase the likelihood of attribution by using charity stationery or logos, your charity e-mail account or charity telephone number.
- *Do not* use your compensated time, or that of other staff, or the charity’s volunteers, including officers and directors. Accordingly, minutes of board meetings and memoranda by charity officers and directors or staff should not evidence any work on, or approval, authorization or direction of, campaign activities by the charity or its staff.

- Do not coordinate candidate campaign activities in any way with the charity's activities, or create any writing that would tend to indicate any coordination.
- You may use your personal time, such as coffee or lunch breaks, to work on a political campaign.
- You may, if your fringe benefits include reasonable telephone use for local calls, and if the telephone number is not identified with the campaign, make local telephone calls for a political campaign on a de minimis basis. To use this exception, the charity's personnel policies or manual should reflect that employees are permitted to make personal calls on their break time.

2. Disclaimers

- In any public or media context, including charity publications and interactions with the public, do clearly and unambiguously state that your actions and statements are yours as an individual and not those of the charity. If you will be identified as affiliated with the charity in a written publication, request that the author use the following statement: "Organization given for identification purposes only; no endorsement by the organization is implied."
- Do make sure the media is monitored for incorrect attributions. This should be assigned to a member of the charity's staff.
- If there is any mistaken attribution to the charity of your statements or actions, or any danger that the charity will be associated with them, do make sure that the charity promptly requests a formal correction from the source. The request must include the charity's explicit and credible public disclaimer of any position, positive or negative, on any candidate.
- Do make sure the charity keeps a written record of all disclaimers requested and published.
- Maintaining a disclaimer on the charity's website stating that the charity does not take any position, positive or negative, on any candidate, may be a helpful preventive measure.
- A resolution by the charity's Board of Directors, expressly stating that the charity does not and will not take any position, positive or negative, on any candidate, may also be helpful. It should be kept as part of the minutes of the charity's Board meetings.

3. Statements

- *Do not* allow your election-related statements to be published or reported in any official publication of the charity, including the charity's website or newsletter, or at the charity's programs or events.
- *Do not* make campaign-related statements at any official event of the charity.
- *Do not* sign any campaign-related communications in your capacity as a representative of the charity.
- *Do not*, in your charity work, make any representation to charity donors or volunteers to the effect that their donations or efforts will benefit any political campaign.
- *Do not* allow a political campaign's statements or materials to be used in your charity's fundraising materials or strategies.
- *Do not*, in your work for the charity, begin or escalate criticism or praise of incumbents during an election year. (However, if it has a history of commentary on incumbents, the charity may continue such activities during election season.)

Conclusion

With care, charity-affiliated individuals can personally conduct a substantial amount of candidate-related work without posing a risk to the charity's tax-exempt status. Please note, however, that the guidance above is addressed only to common types and amounts of candidate activity, and the facts of your specific situation may call for particular legal advice. Specifically, the foregoing guidelines are not intended to address situations where your work for a candidate is so high-profile (such as being a campaign spokesperson) or so extensive (such as being paid staff on a campaign) as to interfere with your representation of the charity. For example, if you are heavily identified with the charity or have a leadership role and you plan to be a candidate, it may well be advisable that you resign from your position with the charity, at least for the duration of the campaign. If you or your organization have questions based on your situation, consult the charity's tax law attorney.