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**ELECTION-RELATED ACTIVITIES OF 501(c)(3) ORGANIZATIONS**

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Section 501(c)(3) of the Internal Revenue Code requires that, to qualify as tax-exempt thereunder, a charity<sup>1</sup> may “not participate in, or intervene in (including publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.” This prohibits endorsing candidates or making contributions to candidates’ campaigns, for example, but is interpreted by the IRS to permit a variety of election-related activities if conducted in a nonpartisan<sup>2</sup> manner. There is no comprehensive statutory or regulatory guidance on this subject, but some of the specific authorities in this area are discussed below.<sup>3</sup> *The descriptions of the various legal rules are summaries only, and should not be construed as legal advice.*

1. Publishing voting records of officeholders:

A charity may publish incumbents’ voting records if the safe harbor rules in Revenue Ruling<sup>4</sup> 78-248 (Situations 1 and 4) are followed. Generally, this requires that the charity regularly publish the voting record (such as at the end of each legislative session), include incumbents regardless of their views, address a wide

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<sup>1</sup> “Charity” as used in this document refers to an organization that is exempt from Federal income taxes under Section 501(c)(3) and that is not classified as a private foundation.

<sup>2</sup> As used here, an activity is “nonpartisan” if it does not tend to help or hurt the chances for election of any candidate or group of candidates, regardless of political party affiliation.

<sup>3</sup> If your exact fact situation has not been addressed by the IRS or the courts, you may reason by analogy, but must proceed at your own risk, unless you have the time and money to seek a private letter ruling from the IRS.

<sup>4</sup> Revenue Rulings are issued by the IRS, and may be cited as authoritative as to the IRS’s position described in the Revenue Ruling.

range of legislative subjects, avoid any editorializing or commentary on specific votes or voting patterns of any legislator, and avoid any implicit approval or disapproval of any incumbent's voting record in the content or format of the publication. If the charity does not address a wide range of topics or makes known its views on how incumbents should have voted, Revenue Ruling 80-282 provides an example of circumstances in which that can be acceptable.

2. Publishing voter guides from questionnaires sent to candidates by the charity:

A charity may publish candidates' responses to a questionnaire from the charity if the safe harbor rules in Revenue Ruling 78-248 (Situations 2 and 3) are followed. These generally require that the charity publish the responses of all candidates in a particular race, cover a wide variety of issues selected by the charity based on their importance and interest to the electorate as a whole, and avoid any evidence (in the wording of questions, or in the content or format of the voter guide) of any bias for or against any candidate or group of candidates.

3. Ranking or rating candidates:

A charity may not publish rankings or ratings of candidates, even if the ratings were determined without regard to political affiliation and resulted from a neutral and unbiased process. See *Association of the Bar of the City of New York v. Commissioner*, 858 F.2d 876 (2d Cir. 1988), *cert. denied*, 490 U.S. 1030 (1989), and LTR<sup>5</sup> 9619596.

4. Candidate forums and debates:

A charity may host or sponsor a candidates' debate if the framework described in Revenue Ruling 86-95 is followed, requiring that the charity invite all legally-qualified candidates; that questions cover a broad range of issues prepared and presented by a nonpartisan, independent panel of experts such as representatives of the media or educational organizations, or community leaders; that each candidate receive an equal opportunity to present views; and that there is a moderator whose function is solely to assure that ground rules are followed, and who states at the beginning and the end of the proceedings that the views expressed by candidates are their own, and sponsorship of the forum is not

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<sup>5</sup> Private letter rulings, cited here as PLR's, and technical advice memoranda, cited here as TAM's, are public documents describing the IRS' application of the law to a specific set of facts as presented by a taxpayer. They may not be cited as precedential by any other taxpayer, although they do provide insight as to how the IRS might analyze a similar situation if presented with it.

intended as an endorsement of any candidate by the sponsoring organization. It is not clear whether a candidate's refusal to participate after being invited prevents the charity from holding the debate. In addition, in later (nonbinding) statements, the IRS has indicated that less than all candidates may be invited if reasonable, objective criteria were consistently and non-arbitrarily applied to decide who to invite, especially if inviting all candidates is impractical. See, for example, TAM<sup>5</sup> 9635003.

5. Candidate appearances at charity events:

A charity may wish to invite a candidate to appear at a charity event for reasons unrelated to the person's candidacy, such as because the candidate has a particular expertise, or holds a particular public office. In such cases, according to nonbinding IRS statements, the charity should explicitly state that it does not support or oppose the person's candidacy (both in the person's introduction at the event, and in communications about the event, before and after), ensure that there are no other indications of the charity's support or opposition, and prohibit any political fundraising from occurring at the event. Alternatively, it may be acceptable for the charity to simply avoid entirely any and all references to either the election or the individual's candidacy at the event. The charity need not invite every candidate.

A charity may also wish to invite candidates to appear in their capacity as candidates, as a means of educating the public or the charity's members about the candidates' positions on issues. In that case, you may refer to rules for candidate debates, discussed above. If the candidates are each invited to appear alone at one in a series of events, the opportunity given to each must be roughly equivalent (anticipated audience, amount of time, time of day, setting, etc.).

6. Advocacy on issues identified with candidates:

Where positions on narrow issues coincide with the fault lines between candidates, such as abortion rights, gun control, drilling in the Arctic National Wildlife Refuge, or tax cuts versus deficit reduction, the IRS has difficulty fixing the boundaries for acceptable Section 501(c)(3) activity. The IRS may find that a charity implicitly endorsed a candidate by promoting a particular position on an issue which that candidate is known to espouse, or that the charity used certain phrases (e.g., progressive, right-wing, green) as code words for candidates. Compare PLR 8936002 and PLR 9117001.

7. Advocacy on issues directed at candidates or parties:

A charity may generally send its pre-existing educational materials to candidates, campaigns, or political parties, unsolicited, in order to educate the candidates or parties about the charity and its views. The charity should address such materials to all candidates in a race. A charity may also seek to influence the candidates' or parties' positions on issues, through meetings or otherwise, again so long as such efforts are directed equally at all candidates or parties in an electoral race. A charity may respond to candidates' inquiries about the charity's positions on issues with available educational materials, but should not undertake any special work to respond, as that could be seen by the IRS as providing services to the campaign. Asking a candidate to pledge to support a charity's position on an issue if elected is risky, since the IRS assumes a charity would only seek such a pledge in order to publicize the candidate's response so as to influence his or her chances for election. See Revenue Ruling 76-456.

8. Voter registration and GOTV activities:

A charity may conduct voter registration and GOTV drives if done in a strictly nonpartisan manner, both as to content of message and targetting of distribution.<sup>6</sup> The charity may not refuse to register voters based on how they expect to vote, nor may it use particular issues to encourage registration or voting by those only on one side of those issues. The charity can refer to a specific issue as a reason to vote, so long as the charity is not, directly or indirectly, telling the voter which way to vote based on candidates' positions on that issue. Referring to a wide variety of unrelated issues as reasons to vote is a safer approach.

If IRC Section 4945(f) is followed (requiring voter registration activities to be carried out over at least two election cycles, and in at least five states), voter registration campaigns can be funded by private foundations.

9. Relationships with political organizations:

A charity cannot subsidize a political organization described in Section 527 by providing it with office space, personnel, mailing lists, etc. for free or at a discount. However, a charity may engage in transactions with a political organization if full fair market value is charged for the goods or services, and any net income is

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<sup>6</sup> Interestingly, targetting those historically underrepresented in the democratic process (e.g., racial minorities), or an organization's natural constituency (e.g., patients at a local drop-in clinic), will generally not, by itself, convert a nonpartisan activity to a partisan one, even if the targetted group is statistically more likely to vote for candidates of one party than the other.

treated as unrelated business taxable income. But nonpartisanship must still be maintained: for example, before a charity sells or rents its mailing list to a candidate or party, even at full fair market value, it must offer use of the list on the same terms to all other candidates or parties in the race. A political organization may generally subsidize a charity.

Of course, a charity may not expressly coordinate its activities with a political organization. Less obviously, if a charity conducts its programs in an election year so that its public events, staff work, voter education, etc., just happen to dovetail with a political campaign or party's work, the charity may be found to be operating with the political organization as a single, unified election machine.

10. Actions by individuals associated with a charity:

Individuals who are on the Board or staff of a charity do not lose their free speech rights just because of that relationship, and may freely engage in political activities personally, but they may not do so on behalf of the charity. Generally, this means the individual must be on his or her own time, may not use the charity's facilities or resources for those political activities, and may not represent that they are speaking for the charity. For examples of how the IRS draws the line, see the January 10, 1992, press release issued by Jimmy Swaggart Ministries (where Swaggart's acts were attributed to the charity), and an IRS memorandum dated December 1, 1998, addressed to The Progress and Freedom Foundation (where Newt Gingrich's acts were not).

11. Operating campaign training schools:

In 1989, in *American Campaign Academy v. Commissioner*, 92 T.C. 1053, the U.S. Tax Court upheld the IRS' determination that a campaign training school funded by Republicans, using Republican-oriented classroom materials, whose graduates went to work for Republican candidates, does not qualify under Section 501(c)(3). The rationale was not that the school engaged in political activity, but that its operations resulted in too much private benefit to the Republican Party.

12. Statements made in fundraising:

It's not just what a charity does that can get it in trouble, but how it talks about what it does: framing accomplishments as political victories can taint otherwise nonpartisan efforts. One charity which claimed in fundraising appeals that its "nonpartisan" voter registration programs had effectively influenced the election or

defeat of candidates based on their ideology was subject to penalty taxes by the IRS. See PLR 9609007.

More recently, the IRS fined the Heritage Foundation for allowing Bob Dole, then a Presidential candidate, to sign a widely-distributed fundraising letter which recited much of Dole's campaign platform as the Foundation's agenda, in encouraging gifts to the Foundation. The letter made no reference to Dole's status as a candidate or the upcoming election, and the mailings raised substantial donations to the Foundation. Nevertheless, the Foundation's mailing helped Dole's campaign, according to the IRS. See TAM 200044038.

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