



## Education Update

# Political Activities By Non-Profit Educational Institutions

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The 2012 election season is upon us. There will be hotly-debated contests throughout the nation, culminating in national and local contests this fall.

Each political cycle, schools face questions regarding their obligations (and limitations) when it comes to involvement by the school in various political activities. For example, can your school permit a student club to host one party's candidate on campus? Must you open the opportunity to other candidates? It is extremely important that you understand the IRS guidelines relating to a non-profit's political limitations so that you do not place the school's tax-exempt status in jeopardy.

Under the Internal Revenue Code, all section 501(c)(3) organizations (also known as non-profit organizations) receive exceptional tax treatment under federal law because they are tax-exempt and contributions to them are tax deductible. But the trade-off for this preferential tax treatment is a limitation on certain political activities.

### What Are The Limitations?

Non-profit 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. Contributing to political campaigns or public statements – verbal or written – made on behalf of the non-profit organization in favor of or in opposition to any candidate for public office, violates the prohibition against political campaign activity. Simply put, non-profit organizations are forbidden from engaging in any political campaigning activity; violating this prohibition may result in denial or revocation of tax-exempt status and the imposition of certain excise taxes.

Concrete examples of prohibited activities include voter education, registration activities, or any political activity with the *appearance of bias*, such as 1) favoring one candidate over another; 2) opposing a candidate in some manner; or 3) having the effect of favoring a candidate or group of candidates. All these will constitute prohibited participation or intervention.

Moreover, contributing to political campaign funds, sponsoring events to advance the candidacy of a particular candidate or party, expressly or impliedly endorsing a candidate for public office (or for the nomination of a particular party), or commenting on specific actions, statements, or positions taken by candidates (including incumbents) are all prohibited.

Using institutional resources to support a particular candidate – such as reimbursing individuals for political donations, providing lists, use of office space, phones, or other institutional resources to support a candidate, campaign, political party or political action committee – are clearly prohibited.

Promoting or even commenting on issues that are identified as dividing lines between candidates or parties is a slippery slope given that it can be interpreted to imply bias and partisan views by the educational institution.

### **What Activities Are Safe?**

Even though there are many specific limitations, certain activities or expenditures are lawful depending on the facts and circumstances. For example, certain voter-education activities (including presenting public forums and publishing voter education guides) conducted in a *non-partisan manner* do not constitute prohibited political campaign activity. Other activities intended to encourage people to participate in the electoral process, such as voter registration, get-out-to-vote drives, or circulating unbiased questions or public-opinion polls, would not be prohibited if conducted in a non-partisan manner.

Conducting institution-sponsored public forums is not prohibited if all legally qualified candidates for a public office (or for the nomination of a particular party) are invited and given equal access and opportunity to speak, and if the format and content of the forum are presented in a neutral manner. If a non-profit educational institution chooses to invite candidates to speak, take steps to ensure that an invitation is extended to all qualified candidates and that no candidate is favored in relation to the activity.

In a situation such as that, ensure that separate speaking opportunities are equal in nature (i.e., both have the same likelihood of a large or small audience). The school should also communicate clearly that the speaker's attendance does not reflect that the school supports or opposes any particular candidate, and should prohibit fundraising at the event. Ensure that the event is not conducted as a rally or other campaign-like event.

The fine line between what is prohibited and what is within legal limits is one that must be respected. The key is to be non-partisan and provide equal opportunity to obtain information and participation.

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