

August 28, 2008

The Alliance for Justice has provided the following information as a follow-up to last week's webinar on "Election-Related Activities by 501(c)(3) Organizations." Fact sheets with further details are available on the AFJ website at [www.afj.org](http://www.afj.org).

### **Election-Related Activities by 501(c)(3) Organizations**

501(c)(3) organizations are strictly forbidden from supporting or opposing any candidate for public office. No organizational resources, including personnel, may be used for partisan election purposes. The IRS will consider all of the facts and circumstances surrounding an activity to determine whether an activity violates this prohibition. Some of the facts and circumstances include: proximity to the election; reference to the election; identifying the candidates' positions on a policy issue; whether the policy issue raised distinguishes the candidates; and the organization's advocacy history on the policy issue, among others.

Although public charities may not intervene in an election by supporting or opposing candidates, they may engage in nonpartisan voter education activities—activities that encourage the public to exercise their right to vote. Permissible activities include voter registration, get-out-the-vote (GOTV), and issue oriented activities designed to educate the public and the candidates on the issues important to the organizations. However, all of these activities must be conducted in a way that does not suggest or otherwise imply which candidate is "better" or who people should vote for. The IRS uses the facts and circumstances test to determine whether the activities were conducted in a nonpartisan manner—in other words, in a way that did not support or oppose a candidate.

Under the facts and circumstances test, it is not always easy for a 501(c)(3) to determine whether a particular activity will be deemed by the IRS to be nonpartisan. In many cases, there are no clear right or wrong answers; in these circumstances, each organization must determine what level of risk it is willing to take.

Whenever engaging in nonpartisan election activity, a 501(c)(3) organization should include a disclaimer that states explicitly that the organization is a nonpartisan organization that does not support or oppose candidates for office.

If the IRS determines that a 501(c)(3) supported or opposed a candidate, it may impose a tax on the public charity's partisan election activities and/or revoke the organization's tax-exempt status. The tax on political expenditures may be applied to the organization itself, and any organization manager who agreed to the making of the political expenditure is also subject to a tax.

### **In general, 501(c)(3)s MAY:**

- Engage in limited lobbying, including work to support or oppose ballot measures
- Conduct nonpartisan public education and training sessions about participation in the political process
- Educate all of the candidates on public interest issues
- Educate the public about the candidates' views on a broad range of issues (through candidate questionnaires or candidate debates)
- Rent, at fair market value, mailing lists and facilities to other organizations, legislators, and candidates if an on-going activity and not arranged only for a particular candidate or party

- Conduct nonpartisan get-out-the-vote and voter registration drives
- Establish a controlled 501(c)(4) organization
- Work with all political parties to get policy positions included on the party's platform
- Attend political party conventions to raise awareness of issues important to the organization

**In general, 501(c)(3)s MAY NOT:**

- Endorse candidates for public office
- Make any campaign contributions (whether monetary or in-kind)
- Make expenditures on behalf of candidates
- Restrict rental of their mailing lists and facilities to certain candidates or engage in such business transactions for the first time with candidates
- Ask candidates to sign pledges on any issue (for instance, ask candidates if they promise to repeal an executive order or push for increased funding if elected)
- Increase the volume or amount of incumbent criticism as election time approaches
- Publish or communicate anything that explicitly or implicitly favors or opposes a candidate

For fact sheets (in both English and Spanish) that describe these rules in more detail, visit Alliance for Justice's website at <http://www.afj.org/for-nonprofits-foundations/resources-and-publications/about-advocacy-election.html>