

## It's STILL The Most Expressive Time Of The Year

Oh by gosh by golly, it's time for immigration, and NAFTA and folly! It is indeed still the most expressive time of year. Unless you've spent the last nine months living on Mars, in a cave and under a rock, you've heard and/or read your fair share of election news stories. Somewhere among the 33,000 emails and the armrests in first class are a myriad of issues that impact our nation's citizenry and institutions and it seems everyone wants in on the conversation. While the 501(c)(3) is no exception, it still has some rules to adhere to in order to maintain its tax-exempt status when choosing to enter the fray. The following update will keep those standards straight for you with a quick review of the rules followed by a Q&A inspired by you!

### THE REVIEW

Let's review the standards we must maintain in the area of use of institutional resources, lobbying and issue advocacy. You'll remember those terms from our original guide. Here's a recap.

**Institutional Resources - General Rule All 501(c)(3) 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. Here are a few common ways in which an institution can be deemed as having impermissibly intervened in a campaign-**

**Funding:** Contributions to political campaign funds and institutional reimbursement for such contributions paid to employees.

**Facilities:** Tax-exempt organizations may not provide space or services to a candidate, campaign, party or political action committee unless the space or services are made available to all candidates on the same terms and for their market value.

**Favor:** Verbal or written statements made by the organization in favor (or in opposition to one) to any candidate for public office.

**Lobbying - General Rule: 501(c)(3) organizations may engage in activity that amounts to an attempt to influence legislation (i.e., lobbying) so long as that activity does not amount a substantial portion of its activity or, under the IRC's Expenditure Test, exceed a specified amount.**

**Issue Advocacy General Rule: 501(c)(3) organizations may take a position on matters of public policy, even if the issues involved are those that sharply divide candidates for office. However, official communication about its position should not function as campaign intervention.**

### THE QUESTIONS (AND THE ANSWERS)

You are a politically curious campus and you've asked some great questions over this season. You'll find those questions (and their answers) below.

- **I see the Santa Barbara News Press just endorsed a candidate. Can The Horizon endorse a candidate without jeopardizing our tax-exempt status?**

- An IRS revenue ruling explicitly indicates that a college or university's provision of space and/or faculty advisors in support of a student newspaper that publishes editorials and candidate endorsements is not an attempt on the part of the college or university to influence legislation, nor intervene in a campaign. Therefore, the activity does not jeopardize tax-exempt status. I don't need to tell you that this same activity transferred from the Horizon to the Westmont Magazine is a problem, right?
- **I use a helpful voter education guide for Christians whenever I cast my ballot and I more often than not vote for the individual the guide recommends. Can I email that link to some friends at work?**
  - Maybe. Is this email to your friends unrelated to your role as a Westmont employee, maybe even sent from a non-work email or from your work email with a note clearly indicating that the voters' guide does not represent the opinions of the institution? Those are all the factors to consider and if your answer to those questions is no, you are not jeopardizing the college's tax-exempt status with your email to your friends. It's not you that IRS prohibits from supporting a candidate or set of candidates but rather the institution. The factors outlined above help us consider whether your message as an employee of the college could be construed to be a message from the college itself. The use of your email as a resource to send what is otherwise not an act of campaign intervention on the college's part does not violate the rules prohibiting that activity by 501(c)(3) organizations.
- **Does inviting one candidate for office to speak on campus mean that we have to invite all of them?**
  - Candidate Appearances vs. Non-candidate Appearances
    - Candidate Appearance: An individual running for political office appearing for the purpose of encouraging support for his/her candidacy. An institution risks being deemed as supporting or endorsing the candidate and therefore impermissibly intervening in that candidate's campaign when no other candidate is invited to speak on their behalf. Here are the factors that the IRS will consider when making a determination on the issue:
      - Whether the college provides an equal opportunity to the political candidates seeking the same office,
      - Whether the college indicates any support of or opposition to the candidate, and
      - Whether any political fundraising occurs.

The remedy to this is to invite opposing candidates and provide them with equal opportunity and time to make a candidate appearance. Note that candidates need not appear at the same time but the forum provided should be similar in anticipated audience and location. If it's helpful, in this context, think of candidates like Lay's Potato Chips: you can't have just one.

- Non-candidate Appearance: An individual running for office or seated in office appearing in their personal capacity does not

jeopardize 501(c) (3) status. Here are the factors the IRS will consider in confirming that the appearance is not one of impermissible campaign intervention:

- Whether the individual is chosen to speak solely for reasons other than candidacy for public office,
- Whether the individual speaks in a non-candidate capacity or references his or her candidacy or the election,
- Whether the organization maintains a nonpartisan atmosphere on the premises or at the event where the candidate is present, and
- Whether the organization clearly indicates the capacity in which the candidate is appearing and does not mention the individual's political candidacy or the upcoming election in the communications announcing the candidate's attendance at the event.

➤ **I read something about a young undergrad in West Virginia who was voted into the state legislature after having run her campaign from her dorm room. How'd the school get away with that?**

- Yes, I read that too! Her name is Saira Blair. The question is whether provision of student residence hall represents institutional support of Saira Blair's candidacy. Answer: no, unless Saira was providing that residence hall to her free of charge for the purposes of supporting her candidacy, prohibited another student running against her from using his own dorm room to conduct his campaign activity, or permitted her to conduct a portion of her campaign in facilities not available to others.

➤ **Can the college produce a voter's guide for its employees?**

- Let's assess that. Is it a non-partisan educational guide that perhaps provides a listing of candidates along with their voting records, not skewed to present voting on single issue or narrow range of issues, not indicating party preference, nor aligning institutional positions on issues of import with candidates' records and/or rating them in the that context or in other communications? Oh, thank goodness; that's likely permissible. Though I'm pretty sure we have no such guide in existence but if we did, we'd want it to fit the description just provided.

Have a question you don't see here? Give me a call or send me an email and we'll include it in this update.