



# READY REFERENCE PAGE

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## IRS Issues New Guidance on Electioneering

*Service has promoted educational efforts  
to avoid uncertainty for charities during election cycles*

The Internal Revenue Service has issued a formal [Revenue Ruling \(Rev. Rul. 2007-41\)](#) to provide guidance to charities on conduct that it will interpret as participation in a political campaign. Based in part on situations examined after the 2004 election and first issued as a Fact Sheet in 2006, the document is intended to help charities understand what they can and cannot do during an election campaign.

Section 501(c)(3) of the Tax Code prohibits a charity from participating in a political campaign. ([See Ready Reference Page: “Charities May Not Participate in Elections.”](#)) But the IRS said it found many charities, including churches, confused about the limits during its investigation of the 2004 election cycle. ([See “IRS Revokes 3 Exemptions for Electioneering; Will Continue Monitoring During ‘06 Elections.”](#))

“Political campaign intervention includes any and all activities that favor or oppose one or more candidates for public office” at any level, the IRS said. “The prohibition extends beyond candidate endorsements. Contributions to political campaign funds or public statements of position (verbal or written) made by or on behalf of an organization in favor of or in opposition to any candidate for public office clearly violate the prohibition on political campaign intervention.”

Distribution of statements prepared by others that favor or oppose a candidate are also prohibited. Allowing a candidate to use an organization’s assets or facilities will also violate the limit if other candidates are not given an equivalent opportunity. Voter registration and get-out-the-vote activities are permissible so long as they don’t favor or oppose a candidate. Many determinations will be made on a “facts and circumstances” review of the entire situation, it said.

The IRS illustrated its principles with many examples.

### **Individual Activity by Charity Leaders**

The statute “is not intended to restrict free expression on political matters by leaders of organizations speaking for themselves, as individuals,” the IRS said. “Nor are leaders prohibited from speaking about important issues of public policy. However, for their organizations to remain tax-exempt under section 501(c)(3), leaders cannot make partisan comments in official organization publications or at official functions of the organization.” In addition, the Service says leaders “are encouraged to clearly indicate that their comments are personal and not intended to represent the view of the organization.”

Where a charity CEO personally endorses a candidate as one of five prominent leaders in a full-page ad in the local newspaper which states that “titles and affiliations of each individual are provided for identification purposes only,” the charity did not contribute to the cost of the ad, and it was not in an official publication of the charity, the ad does not constitute participation.

Where a university president endorses a candidate in a regular “My Views” column in a monthly alumni newsletter, the endorsement in an official publication constitutes intervention even when the president paid for the cost of the publication personally.

A minister endorsing a candidate at a press conference at a candidate’s headquarters is not engaged in improper participation where there is no indication that the church endorses the candidate. But where the chair of the Board of a conservation organization urges members to vote for a candidate at a regular

meeting of the organization, the organization is considered to have intervened since the personal endorsement was made at an “official” meeting of the organization.

### **Candidate Appearances**

Candidate appearances may demand more analysis under the “facts and circumstances” test. The IRS warns charities not to blindly accept the reassurance of a candidate that an activity is appropriate. The candidate “may not be familiar with the organization’s tax-exempt status,” the IRS says charitably, and “may be focused on compliance with the election laws that apply to the candidate’s campaign rather than the federal tax law that applies to the organization.”

When a candidate is invited to speak at an organization event as a political candidate, the Service says the organization should ensure that it provides equal opportunity to other candidates for the same office, it does not indicate support for or opposition to any of the candidate, and no political fundraising occurs.

A charity will not be likely to be deemed to have offered equal opportunity if one candidate is invited to speak at the organization’s “well attended annual banquet” and the other at a “sparsely attended general meeting.”

Even with public forums with multiple candidates, the IRS would inquire whether questions are prepared by an independent nonpartisan panel, whether the forum covers a broad range of topics and not only the field of interest to the organization, and whether the candidates are asked whether they agree or disagree with positions taken by the organization.

In its examples, the IRS says inviting candidates to address the group separately in regular meetings for three consecutive weeks is okay when they are all publicly announced and there is no indication at any meeting of support or opposition for particular candidates. If there are four candidates and one turns down the opportunity to speak, an event can continue with the other three and a statement that the fourth declined.

If a minister allows a candidate to speak the Sunday before election without inviting the opponent and the candidate urges the congregation to “go the extra mile” to get a big turnout, the activities are considered intervention by the church because it is an official activity.

Candidates may appear in a non-candidate capacity and it will not be deemed to be an intervention if the individual is chosen to speak solely for reasons other than the candidacy, the individual speaks only in a non-candidate capacity, neither the individual nor any representative of the organization mentions the election, no campaign activity occurs, and the organization maintains a non-partisan atmosphere at the event.

The IRS gives some examples of the application of this rule. Where the president of the organization traditionally recognizes any public officials in the audience, recognition of a public official, without mention of the candidacy, is permissible. A hospital may ask the local member of Congress to participate in a groundbreaking for a new facility so long as nothing is said about the election. A university alumni magazine may include a statement that alum X of the class of ‘xx is running for mayor of Metropolis in a class notes column without being deemed to participate in the election so long as there is no campaign material other than the simple statement of fact.

But if the Mayor attends a symphony concert and the chair of the Board tells the audience that “we will need his help if we want these concerts to continue next year so please support the Mayor in November as he has supported us,” the organization has crossed the line.

### **Issue Advocacy vs. Intervention**

The IRS also takes the position that certain issue advocacy can result in intervention in a political cam-

paigned if there is any message favoring or opposing a candidate, even if it does not expressly tell an audience to vote for or against the candidate. This area is even more problematic and subject to “facts and circumstances” analysis. The Service has previously issued guidance on activities that cause a nonprofit to engage in political activity under Section 527. ([See Ready Reference page: “IRS Gives Guidance on Advertisements That Constitute Section 527 Political Activity.”](#))

Factors include whether a communication identifies one or more candidates, expresses approval or disapproval of a candidate’s position, is delivered close to an election, makes reference to voting, addresses an issue distinguishing the candidates, is made as part of a continuing series of communications unrelated to election cycles, or is related to a non-electoral event such as a scheduled vote on specific legislation.

A university’s advertisement urging voters to call or write an incumbent who has opposed funding for education is okay, even shortly before the election, if the ad does not call attention to the election, the issues are not distinguishing in the campaign, and the ad is directly related to a scheduled vote. But a radio ad urging an increase in state funding for public education shortly before an election in which the governor is a candidate for re-election, asking voters to tell the Governor what they think about underfunded schools, is not part of an ongoing series, and is not related to any non-election event is considered participation.

### **Voter Guides and Business Activity**

In the 2006 Fact Sheet the Service said voter guides may violate the prohibition if they focus “on a single issue or narrow range of issues, or if the questions are structured to reflect bias.” This is the position taken in Rev. Ruls. 78-248 and 80-282 which apparently have never been tested in the courts. ([See Ready Reference Page: “Charities May Not Participate in Elections.”](#)) This material was not carried forward to the final Revenue Ruling but is probably still the position of the IRS.

The IRS notes that if a charity distributes a voters guide prepared by another entity, the distributing charity is responsible for the distribution and will be deemed to have participated in a campaign if the guide is biased.

A charity can also get into trouble making goods or services, particularly facilities or mailing lists, available to candidates unless they are equally available to all at customary and usual rates and not available only for a particular candidate.

Renting a hall generally available to the public at the standard rate is not political intervention, but renting a mailing list at prevailing rates to one candidate while denying it to others would be participation. (The IRS does not say anything about renting to one candidate when the other never asks.)

Internet websites also come under scrutiny, not only for what is on the organization’s own site but also for what is on a site linked from the charity.

Links to all candidates’ websites are permitted if presented “in a neutral unbiased manner.” Links to a newspaper article praising the work of the charity is not a political intervention even though the newspaper’s site may contain editorials endorsing candidates in pending elections. A statement on a church website urging members to “lend your support” to “your fellow parishioner” is clearly intervention on an official site.

Finally, the Service warns that even though the examples are described separately, “where there is a combination of activities, the interaction among them may affect whether or not the organization is engaged in political campaign intervention.” In other words, the whole may be greater than the sum of the parts.