



# UNITED STATES CONFERENCE OF CATHOLIC BISHOPS

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## POLITICAL ACTIVITY GUIDELINES

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The following document is provided by the USCCB Office of General Counsel in order to assist (arch)dioceses, parishes, and other Catholic organizations ("Catholic organizations") that are exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code ("IRC") in distinguishing activities that are permitted during election campaigns from activities that are prohibited. This guidance focuses primarily on section 501(c)(3) of the IRC, because it contains a prohibition, which has been interpreted as absolute, against participation or intervention in a political campaign on behalf of or in opposition to any candidate, as a condition of maintaining federal income tax exemption.

General guidance cannot anticipate every conceivable fact pattern. Nor can it substitute for the advice Catholic organizations should receive from their own attorneys, because application of the political campaign intervention prohibition is inherently fact-specific and frequently presents close questions. An (arch)- diocese or parish having questions about a particular activity should contact its (arch)diocesan attorney prior to engaging in that activity. Other Catholic organizations should contact their own legal advisors.

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**What does section 501(c)(3) of the IRC say about political campaign activity?** Section 501(c)(3) of the IRC prohibits organizations that are exempt from federal income tax under its provisions, including Catholic organizations exempt under the USCCB Group Ruling, from participating or intervening in political campaigns on behalf of or in opposition to any candidate for public office. This prohibition has been interpreted as absolute. [See: Fact Sheet 2006-17, *Election Year Activities and the Prohibition on Political Campaign Intervention for Section 501(c)(3) Organizations*, at 1 (February 2006) (hereinafter "Fact Sheet"), <http://www.gov/newsroom/article/0,,id=154712,00.html>.]

**How does the IRC limit lobbying activity by Catholic organizations?** The IRC limits the amount of lobbying in which section 501(c)(3) organizations may engage. Under section 501(c)(3), Catholic organizations may engage in lobbying activities only if they do not constitute a substantial part of their total activities, measured by time, effort, expenditure and other relevant factors. Neither the IRC nor the regulations define what is "substantial" in this context. A few cases suggest that the line between what is substantial and what is insubstantial lies somewhere between 5% and 15% of an organization's total activities. IRS does not endorse any particular percentage safe harbor, but would clearly be more comfortable at the lower end of the spectrum. [See: *Murray Seasongood v. Commissioner*, 227 F.2d 907 (6th Cir. 1955) (less than 5% time and effort was not substantial); *Haswell v. U.S.*, 500 F.2d 1133 (Ct.Cl. 1974), *cert. denied*, 419 U.S. 1107 (1975) (16-20% of budget was substantial).]

**Where did the political campaign intervention prohibition come from?** Contrary to popular belief, the section 501(c)(3) political campaign intervention prohibition is not a manifestation of Constitutionally-mandated "separation of church and state". The prohibition applies to *all* section 501(c)(3) organizations, not just churches and religious organizations. The political campaign intervention prohibition was introduced by then-Senator Lyndon B. Johnson during Senate floor debate on the 1954 version of the tax code. LBJ appears to have been reacting to the support provided Dudley Dogherty, his challenger in the 1954 primary election, by certain tax-exempt organizations. There is no legislative history to explain definitively why LBJ sought this amendment to the IRC. However, there is no evidence that religious organizations were his targets. [See: Judith Kindell & John Reilly, *Election Year Issues*, FY 2002 IRS Exempt Organizations Technical Instruction Program at 448-451 (August 2001) (hereinafter "*Election Year Issues*"), <http://www.irs.gov/pub/irs-tege/topici02.pdf>; Patrick L. O'Daniel, *More Honored in the Breach: A Historical Perspective of the Permeable IRS Prohibition on Campaigning by*

*Churches*, 42 B.C.L.Rev. 733 (2001); Deirdre Halloran & Kevin Kearney, *Federal Tax Code Restrictions on Church Political Activity*, 38 Cath.Law. 105, 106-108 (1998).]

***Doesn't the First Amendment protect the rights of Catholic organizations to engage in political campaign activity?*** As part of the federal tax law, the section 501(c)(3) political campaign intervention prohibition is not an absolute prohibition against political activity by tax-exempt organizations. Rather, it is a condition placed on the receipt of federal tax exemption. Thus, an exempt organization has a choice between involvement in political campaign intervention and the benefits of tax exemption. Because of this distinction, courts have not been sympathetic to claims by religious organizations that the section 501(c)(3) political campaign intervention prohibition violates First Amendment rights. For example, a few years ago the application of the political campaign intervention prohibition to revoke the section 501(c)(3) tax exemption of a New York church was upheld in the face of the church's challenges under the free exercise clause of the First Amendment and the Religious Freedom Restoration Act. [See: *Branch Ministries v. Rossotti*, 211 F.3d 137 (D.C. Cir. 2000).]

***What is the difference between lobbying and political campaign activity?*** In the most basic terms, lobbying focuses on legislation, whereas political campaign activity focuses on candidates and campaigns for election. Lobbying includes both direct lobbying and grassroots lobbying. Direct lobbying means contacting members of a *legislative body*, whether federal, state, or local, for the purpose of proposing, supporting, or opposing legislation or advocating the adoption or rejection of legislation. Grassroots lobbying means urging members of the public to do the same. Section 501(c)(3) limits the amount of lobbying a Catholic organization can do; it does not prohibit lobbying outright. The lobbying limitation applies both to lobbying that is germane to an organization's tax-exempt purposes and to lobbying that is not. [See: Treas. Reg. § 1.501(c)(3)-1(c)(3)(ii); Rev. Rul. 67-293, 1967-2 C.B. 185.]

***What is considered "legislation"?*** Legislation means any action: (a) by Congress, a state or local legislative body; or (b) by the public in a referendum, initiative, constitutional amendment or similar procedure. [See: Treas. Reg. § 1.501(c)(3)-1(c)(3)(iii).]

***Are ballot measures lobbying or political activity?*** Ballot measures, including referenda, initiatives, constitutional amendments, and bond measures, are considered legislative proposals. Thus, involvement by Catholic organizations in various forms of ballot measures is *limited, not prohibited*. Catholic organizations may support or oppose ballot measures, etc., in furtherance of their exempt purposes, subject to the relevant lobbying limitation, without jeopardizing tax-exempt status.

***What is the "lobbying election"? Can Catholic organizations make the lobbying election?*** In 1976, Congress enacted section 501(h) of the IRC, which is an elective provision that established a sliding scale of permissible lobbying expenditures based on an exempt organization's total budget. However, *at their own request*, churches, conventions or associations of churches, and integrated auxiliaries of churches were made *ineligible* to elect treatment under section 501(h). Thus, (arch)dioceses, parishes and many other Catholic organizations are not eligible to make the section 501(h) lobbying election, and remain subject to the general "substantiality" test, *i.e.* only an insubstantial amount of their activities can be devoted to lobbying. [See: I.R.C. §§ 501(h)(5) and 4911(f)(2).]

***Does the political campaign intervention prohibition apply to individuals?*** Section 501(c)(3) of the IRC applies to organizations, not individuals. Accordingly, the political campaign intervention prohibition applies to Catholic organizations, not to leaders, employees or members *acting in their individual capacities*. The 1991 IRS-approved press release announcing the settlement with Jimmy Swaggart Ministries over political campaign activities undertaken during the 1986 presidential campaign stated that if an endorsement or statement of opposition occurs during an official organizational function or in an organization's official publication, the endorsement will be attributed to the organization. Thus, the political campaign activity prohibition does not prevent officials of Catholic organizations, acting in their individual capacities, from becoming involved in political activity, *provided* they "do not in any way utilize the organization's financial resources, facilities or personnel, and clearly and unambiguously indicate that the actions taken or statements made are those of the individuals and not of the organization." [See: *Public Statement of Jimmy Swaggart*, President, Jimmy Swaggart Ministries (December 7, 1991); *Election Year Issues* at 363-4.]

***When will an individual's actions be attributed to a Catholic organization?*** Organizations act through individuals. Thus, when officials of a Catholic organization engage in political campaign activity at official functions (e.g., worship services and other official events) of the organization or through the organization's official publications, e.g., parish bulletin or (arch)diocesan newspaper, the political campaign activity will be attributed to the Catholic organization. [See: Rev. Rul. 2007-41, 2007-25 I.R.B. 1421, 1422 (June 18, 2007); *Election Year Issues* at 364.]

***Example 1:*** Minister C is the minister of Church L and is well known in the community. Three weeks before the election he attends a press conference at Candidate V's campaign headquarters and states that Candidate V should be reelected. Minister C does not say he is speaking on behalf of his church. His endorsement is reported on the front page of the local newspaper and he is identified in the article as the minister of Church L. Since Minister C did not make the endorsement at an official church function, in an official church publication or otherwise use the church's assets, and did not state that he was speaking as a representative of Church L, his actions did not constitute campaign intervention attributable to Church L. [See: Example 3, IRS Publication 1828, *Tax Guide for Churches and Religious Organizations*, at 8 (Rev. September 2006) (hereinafter, Pub. 1828), <http://www.irs.gov/pub/irs-pdf/p1828.pdf>. . . ; Situation 5, Rev. Rul. 2007-41.]

***Example 2:*** President A is the Chief Executive Officer of Hospital J, a section 501(c)(3) organization, and is well known in the community. With the permission of five prominent healthcare industry leaders, including President A, who have personally endorsed Candidate T, Candidate T publishes a full page ad in the local newspaper listing the names of the five leaders. President A is identified in the ad as the CEO of Hospital J. The ad states, "Titles and affiliations of each individual are provided for identification purposes only." The ad is paid for by candidate T's campaign committee. Because the ad was not paid for by Hospital J, the ad is not otherwise in an official publication of Hospital J, and the endorsement is made by President A in a personal capacity, the ad does not constitute campaign intervention by Hospital J. [See: Situation 3, Rev. Rul. 2007-41.]

**Example 3:** Minister D is the minister of Church M. During regular services of Church M shortly before the election, Minister D preached on a number of issues, including the importance of voting in the upcoming election, and concludes by stating, "It is important that you all do your duty in the election and vote for Candidate W." Since Minister D's remarks indicating support for Candidate W were made during an official church service, they constitute political campaign intervention attributable to Church M. [See: Example 4, Pub. 1828 at 8.]

Officials of a Catholic organization, acting in their individual capacities, may identify themselves as officials of the organization "so long as they make it clear that they are acting in their individual capacity, that they are not acting on behalf of the organization, and that their association with the organization is given for identification purposes only." Thus, if an official of a Catholic organization endorses or opposes a candidate somewhere other than at the organization's official functions or in its publications, and the Catholic organization is mentioned, it should be made clear that such endorsement is being made by the official in his or her individual capacity and not on the organization's behalf. For example, the following disclaimer may be used, "Organizational affiliation shown for identification purposes only; no endorsement by the organization implied." However, IRS has indicated that such a disclaimer is not effective to avoid attribution if the endorsement occurs in the organization's official publication or at its official function. [See: *Election Year Issues* at 364.]

**Example 4:** Minister B is the minister of Church K. Church K publishes a monthly church newsletter that is distributed to all church members. In each issue, Minister B has a column titled "My Views." The month before the election, Minister B states in the "My Views" column, "It is my personal opinion that Candidate U should be reelected." For that one issue, Minister B pays from his personal funds the portion of the cost of the newsletter attributable to the "My Views" column. Even though he paid part of the cost of the newsletter, the newsletter is an official publication of the church. Since the endorsement appeared in an official publication of Church K, it constitutes campaign intervention attributed to Church K. [See: Example 2, Pub. 1828 at 7; also Situation 4, Rev. Rul. 2007-41.]

The actions of an organization's employees (other than organizational officials) and members may also be attributed to the organization where there is real or apparent authorization of their actions by the organization. IRS has indicated that agency principles apply in evaluating authorization issues. Actions of employees within the scope of their employment generally will be treated as having been conducted with the organization's authorization. In addition, individual actions will be attributed to an organization if the organization ratifies those actions or fails to disavow individual actions performed under the organization's apparent authority. [See: *Election Year Issues* at 364-5; G.C.M. 39414 (February 29, 1984).]

**Who is a "candidate"?** The term "candidate" refers to any individual who offers himself, or is proposed by others, as a contestant for an *elective* public office, whether national, state or local. **When** an individual "offers himself, or is proposed by others", and thus becomes a candidate for elective public office, must be determined on the basis of all relevant facts and circumstances. Clearly, an individual who has announced his intention to seek election to public office is a candidate. However, even an individual who has not announced an intention to seek election (and indeed never becomes a candidate) can be considered a candidate. In addition, *others* may propose an individual as a candidate and take steps to urge his election. The fact that an

individual is a prominent political figure is not alone sufficient to make him a candidate. "Some action must be taken to make one a candidate, but the action need not be taken by the candidate or require his consent." [See: Treas. Reg. § 1.501(c)(3)-1(c)(3)(iii); *Election Year Issues* at 339; 342-4; TAM 9130008 (April 16, 1991).]

Further, section 501(c)(3) does not restrict activity with respect to candidates for *non-elective* public office, e.g., federal judicial nominees. However, if an appointment is made or must be confirmed by a legislative body, any activities in support of or in opposition to the appointment are considered lobbying activities, which are subject to the relevant section 501(c)(3) lobbying limitations. In addition, an organization attempting to influence non-elective offices may be liable for tax under section 527. [See: G.C.M. 39694 (January 21, 1988).]

**Potential Section 527 Applicability:** Section 527 of the IRC imposes a tax at the highest corporate rate on the political activities of section 501(c) organizations. I.R.C. § 527(b). To avoid imposition of section 527 tax, an organization must form a separate segregated fund to make expenditures for political activities. It may not use its own corporate funds to do so. Based on its legislative history, section 527 has been interpreted as not applicable to section 501(c)(3) organizations. S.Rep. No. 93-1357, 1975-1 C.B. 517, 534. Nonetheless, section 527 can have limited applicability to section 501(c)(3) organizations, because the definition of political activities in section 527 is broader than in section 501(c)(3): "the function of influencing or attempting to influence the selection, nomination, election, or appointment of any individual to any federal, state or local public office or office in a political organization." I.R.C. § 527(e)(2). The section 527 definition extends to *non-elective* public office, whereas section 501(c)(3) does not. Accordingly, a section 501(c)(3) organization could establish a separate segregated fund for the limited purpose of conducting *non-elective* section 527 political activities. If the fund meets the requirements of section 1.527-2(b), it will be treated as a political organization subject to the provisions of section 527.

**What is "public office"?** Neither the IRC nor the regulations define the term "public office". In general, there must be some statutory or constitutional basis for construing an office as "public". For example, elective positions *in a political party*, such as precinct committee, may be considered "public office" if they (1) are created by statute; (2) are continuing; (3) are not occasional or contractual; (4) possess fixed terms of office; and (5) require an oath of office. [See: *Election Year Issues* at 339-41; G.C.M. 39811 (June 30, 1989).]

**What kinds of activities are prohibited generally under section 501(c)(3)?** Under the rubric participation in or intervention in any political campaign on behalf of or opposition to any candidate for public office, section 501(c)(3) prohibits a range of activities, generally including: organizational statements, in any medium, of support or opposition for any candidate, political party or political action committee ("PAC"); providing or soliciting financial support to any candidate, political party or PAC; providing or soliciting in-kind support for any candidate, political party or PAC; distribution of voter education materials biased with respect to any candidate, political party or PAC; conduct of public forums, debates or lectures biased with respect to any candidate, political party or PAC; and conduct of voter registration or get-out-the-vote drives biased with respect to any candidate, political party or PAC.

**How does the political campaign activity prohibition apply in specific situations?** An analysis of the

application of the political campaign intervention prohibition to situations commonly encountered by Catholic organizations during election campaigns is set forth below, in alphabetical order.

***Appearances at Church Events.*** IRS has indicated that whether a Catholic organization may invite a candidate to speak at a sponsored event depends upon all the facts and circumstances surrounding the invitation and whether the candidate is invited in her capacity as a candidate or in her individual capacity. Candidates may not be familiar with the inviting organization's tax-exempt status and the prohibition against political campaign intervention under section 501(c)(3). Thus, the inviting organization should clarify the capacity in which a candidate is being invited to speak and inform the candidates of the limitations on his or her presentation.

If an individual is invited in a candidate capacity, the rules applicable to public forums (see *below*) apply, and equal access must be provided to other candidates for the same office. IRS has indicated that the nature of the event to which candidates are invited will be considered in determining whether equal access has been provided. For example, if one candidate is invited to speak at an organization's national convention, and the opposing candidate is offered the opportunity to speak at a breakfast attended by only a handful of people, the inviting organization has not satisfied the equal access requirement. IRS has also indicated that an organization that invited two opposing candidates with the knowledge and expectation that one would not accept the invitation because of well-known opposing viewpoints would likely not be considered to have provided equal access.

If, on the other hand, a candidate is invited to speak in his or her capacity as a public figure, expert, or celebrity, it is not necessary to provide equal access to other candidates for the same office. However, Catholic organizations should take the following precautions to prevent violation of the political campaign intervention prohibition: (1) the candidate must speak only in the capacity of expert, public figure, or celebrity, and not as a candidate; (2) no mention should be made of the candidacy; (3) no campaign activity should occur in connection with the candidate's appearance; (4) all publicity and other communications regarding the candidate's attendance should identify the non-candidate capacity in which the candidate is appearing and should not mention the candidacy; and (5) a nonpartisan atmosphere should be maintained at the event.

***Example 5:*** Minister H is the minister of Church Q. Church Q is building a community center. Minister H invites Congressman Z, the representative for the district containing Church Q, to attend the groundbreaking ceremony for the community center. Congressman Z is running for reelection at the time. Minister H makes no reference in her introduction to Congressman Z's candidacy or the election. Congressman Z also makes no reference to his candidacy or the election and does not do any fundraising while at Church Q. Church Q has not intervened in a political campaign. [See: Example 2, Pub. 1828 at 10 (left-hand column); *also* Situation 11, Rev. Rul. 2007-41.]

***Example 6:*** Historical society P is a section 501(c)(3) organization. Society P is located in the state capital. President G is the president of Society P and customarily acknowledges the presence of any public officials present during meetings. During the state gubernatorial race, Lieutenant Governor Y, a candidate, attends a meeting of the historical society. President G acknowledges the Lieutenant Governor's presence in his customary manner, saying, "We are happy to have joining us this evening Lieutenant Governor Y." President G makes no reference in his welcome to the Lieutenant



Governor's candidacy or the election. Society P has not engaged in political campaign intervention as a result of President G's actions. [Situation 10, Rev. Rul. 2007-41.]

In addition, IRS has stated that if the primary purpose of the invitation is to showcase an individual's candidacy, the organization may still violate the political campaign intervention prohibition even if no campaign activity occurs. If an invitation qualifies as a non-candidate invitation, payment of a customary honorarium to the speaker should not result in a violation of the political campaign intervention prohibition, unless the payment is intended to support the candidate's campaign. [See: Pub. 1828 at 8-10; *Election Year Issues* at 380-2.]

Finally, a candidate's attendance at an exempt organization-sponsored event that is open to the public, such as a concert, lecture, or church picnic, does not by itself constitute intervention in a political campaign. However, the sponsoring organization should ensure that no political campaigning takes place at the event, including distribution of campaign literature, that the candidate is not recognized publicly as a candidate for public office, and that a nonpartisan atmosphere is maintained.

**Example 7:** Mayor G attends a concert performed by symphony S, a section 501(c)(3) organization, in City Park. The concert is free and open to the public. Mayor G is a candidate for reelection, and the concert takes place after the primary and before the general election. During the concert, the chairman of S's board addresses the crowd and says, "I am pleased to see Mayor G here tonight. Without his support, these free concerts in City Park would not be possible. We will need his help if we want these concerts to continue next year so please support Mayor G in November as he has supported us." As a result of these remarks, Symphony S has engaged in political campaign intervention. [Situation 13, Rev. Rul. 2007-41.]

**Bumper Stickers.** Placement of political bumper stickers is essentially an attribution issue. Political bumper stickers should not be placed on vehicles owned by Catholic organizations or rented by Catholic organizations for official business. Section 501(c)(3) does not prohibit the placement of political bumper stickers on the personally-owned vehicles of Church officials or employees.

**Campaign Materials.** Catholic organizations may not distribute voter education or other campaign materials prepared by any candidate, political party or PAC. [See: *Election Year Issues* at 372.]

**Collecting Signatures for Ballot Access.** Catholic organizations may not collect signatures on or encourage voters to sign petitions to enable any candidate to appear on an election ballot. Even if all candidates are treated equally, this activity directly furthers the political candidacies of the individuals involved.

**Columnists.** Generally, the statements of columnists appearing in a Catholic organization periodical are attributable to the organization. Catholic organizations typically pay for columns that appear in their publications, either through salary or syndication payments. Even if a columnist is unpaid, the opinion expressed may nonetheless be attributed to the Catholic organization, especially if the columnist is a Church official, because the periodical constitutes an official publication of the Catholic organization and the organization exercises editorial control over its columnists. Opinion columns are not analogous to unsolicited letters to the editor (see *below*). Accordingly, prudence dictates that Catholic periodicals reject columns that endorse,

support, or oppose candidates.

**De Minimis Activity.** . The political campaign activity prohibition is absolute. There is no exception for *de minimis* activity. However, the enactment of the section 4955 excise tax provisions (see "*Enforcement*" below) may permit relief in certain circumstances. [See: *Election Year Issues* at 352-3.]

**Educating Candidates.** As a general rule, private efforts by a Catholic organization during election campaigns to educate candidates about particular issues or to persuade candidates to endorse or agree with the organization's position on such issues will not constitute political campaign intervention. However, public dissemination of information regarding a candidate's agreement or disagreement with the organization's positions will violate the prohibition against political campaign intervention. Further, if the candidate is an incumbent legislator, whether federal, state or local, these efforts could constitute lobbying activity subject to the relevant limitations under section 501(c)(3) or 501(h). [See: Rev. Rul. 76-456, 1976-2 C.B. 151.]

**Educating Voters.** During election campaigns, Catholic organizations may educate voters about the issues. In addition, they may educate voters about candidates' positions on the issues through such activities as sponsorship of candidate forums and distribution of voter education materials, e.g., incumbents' voting records or results of candidate polls or questionnaires. Such activities, if unbiased in content, structure, format, and context, do not violate the political campaign intervention prohibition (See "*Voter Guides*" below).

**Endorsements, Statements of Opposition.** A Catholic organization may not directly or indirectly make any statement, in any medium, to endorse, support, or oppose any candidate for public office, political party, or PAC. [Treas. Reg. § 1.501(c)(3)-1(c)(3)(iii).]

**Financial Support.** A Catholic organization may not provide or solicit financial support, including even market-rate loans or loan guarantees, for or on behalf of any candidate, political party, or PAC. [See: TAM 9812001 (August 21, 1996-issued March 20, 1998).]

**Fundraising.** A Catholic organization should not conduct fundraising events or activities, or otherwise solicit funds, for or on behalf of any candidate, political party, or PAC. Likewise, a Catholic organization should not permit fundraising for or on behalf of any candidate, political party, or PAC at any sponsored event.

**Letters to Editor.** Many Catholic organization periodicals publish letters to the editor. IRS has offered no advice on the issue of letters relating to candidates or election campaigns. By their very nature, letters to the editor do not reflect the opinion of the periodical, but rather of its readers. However, since the periodical exercises editorial control over letters published, this activity is not immune from scrutiny. Catholic periodicals can take certain steps to lessen the likelihood that letters relating to candidates or election campaigns will be challenged as violations of the political campaign intervention prohibition by: (1) selecting letters based on criteria other than whether they agree with the organization's position; (2) publishing letters reflecting opinions on both sides of an issue; (3) avoiding publication of letters from candidates, their political committees, and organizations that endorse or oppose candidates; and (4) publishing a prominent disclaimer that letters to the editor reflect the opinions of their authors and not the

periodical or its sponsoring organization.

**Loans.** A Catholic organization may not make loans to or execute loan guarantees on behalf of any candidate, political party or PAC. Such activities violate the political campaign intervention prohibition even if market-rate interest is charged and the loan is repaid. [See: TAM 9812001 (August 21, 1996-issued March 20, 1998).]

**In-Kind Support.** A Catholic organization may not provide or solicit in-kind support, such as free or selective use of volunteers, paid staff, facilities, equipment, office supplies, mailing lists, etc. for or on behalf of any candidate, political party, or PAC.

**Internet Activities.** Many Catholic organizations maintain websites and utilize e-mail for communicating with members, parishioners and the general public. The political campaign intervention prohibition and these guidelines apply with equal force to Catholic organization websites and e-mail communications. Thus, a communication or activity that would constitute a violation of the political campaign intervention prohibition does not lose that characterization because it occurs on a website or via e-mail. [See "Websites" below.]

**Issue Advocacy.** The political campaign intervention prohibition does not prevent a Catholic organization from addressing the moral aspects of public policy issues or from pursuing its legislative advocacy program during election campaign periods. The fact that the positions of particular candidates may align with the advocacy positions of Catholic organizations does not alone taint an issue communication. That said, IRS acknowledges that an issue advocacy communication may constitute intervention in a political campaign through the use of code words, such as ,conservativeŠ, ,liberalŠ, ,pro-lifeŠ, ,pro-choiceŠ, ,anti-choiceŠ, ,RepublicanŠ, or ,DemocratŠ, coupled with a discussion of a candidacy or election, even if no candidate is specifically named. IRS advises that for an issue advocacy communication to violate the political campaign intervention prohibition, there must be some reasonably overt indication in the communication to the reader, viewer, or listener that the organization supports or opposes a particular candidate (or slate of candidates) in an election, rather than being a message restricted to an issue.Š [See: *Election Year Issues* at 344-346; TAM 199907021 (May 20, 1998); TAM 9117001 (September 5, 1990).]

**Broad Range of Issues:** When an organization encourages voters to participate in the electoral process by providing information about candidates and their positions (voter education), any candidate information should cover a broad range of issues in an unbiased manner. IRS has indicated that the appropriate scope of the issues that should be covered will depend on the nature of the public office being sought. With respect to issue advocacy communications during election periods, a narrow-issue focus does not per se constitute a violation of the political campaign intervention prohibition. That said, there is real risk that an advocacy communication focused on a narrow issue during an election campaign implicitly invites the audience to measure the candidates% views against the sponsoring organization% agenda. This risk is increased significantly with respect to narrow-issue advocacy communications that mention candidates by name or through the use of ,code wordsŠ. IRS can be expected to scrutinize carefully for political campaign intervention violations any issue-advocacy communication focused on a key high-profile issue separating candidates in a particular election. [See:

Rev. Rul. 78-248, 1978-1 C.B. 154, Situation 4; GCM 34233 (December 3, 1969); *Election Year Issues* at 375-6.]

Although issue advocacy communications must be evaluated in context, IRS has stated that a communication is particularly at risk of violating the prohibition against political campaign intervention if it makes reference to candidates or voting in a specific upcoming election. IRS has stated that “[e]ven if a statement does not expressly tell an audience to vote for or against a specific candidate, an organization delivering the statement is at risk of violating the political campaign intervention prohibition if there is any message favoring or opposing a candidate.” IRS has also indicated that a communication will be considered to identify a candidate not only by stating the candidate’s name, but also by other means, such as showing the candidate’s picture, or by referring to political party affiliations or other distinctive features of a candidate’s platform or biography. [Rev. Rul. 2007-41 at 1424.]

**Example 8:** Candidate A and Candidate B are candidates for the state senate in District W of State X. The issue of State X funding for a new mass transit project in District W is a prominent issue in the campaign. Both candidates have spoken out on the issue. Candidate A supports the new mass transit project. Candidate B opposes the project and supports State X funding for highway improvements instead. P is the executive director of C, a section 501(c)(3) organization that promotes community development in District W. At C’s annual fundraising dinner in District W, which takes place in the month before the election in State X, P gives a lengthy speech about community development issues including the transportation issues. P does not mention the name of any candidate or any political party. However, at the conclusion of the speech, P makes the following statement, “For those of you who care about quality of life in District W and the growing traffic congestion, there is a very important choice coming up next month. We need new mass transit. More highway funding will not make a difference. You have the power to relieve the congestion and improve your quality of life in District W. Use that power when you go to the polls and cast your vote in the election for your state senator.” C has violated the political campaign intervention as a result of P’s remarks at C’s official function shortly before the election, in which P referred to the upcoming election after stating a position on an issue that is a prominent issue in a campaign that distinguishes the candidates. [Situation 16, Rev. Rul. 2007-41.]

IRS has identified the following factors for determining whether an issue advocacy communication constitutes political campaign intervention: (a) whether the communication identifies one or more candidates for a public office; (b) whether the communication expresses approval or disapproval for one or more candidates’ positions and/or actions; (c) whether the communication is delivered close in time to an election; (d) whether the statement makes reference to voting or an election; (e) whether the issue addressed in the communication has been raised as an issue distinguishing candidates for a given office; (f) whether the communication is part of an ongoing series of communications by the organization on the same issue that are made independent of the timing of any election; and (g) whether the timing of the communication and identification of the candidate are related to a non-electoral event such as a scheduled vote on specific legislation by an officeholder who also happens to be a candidate for public office.[See: Rev. Rul. 2007-41 at 1424.]

Factors tending to show that an advocacy communication on a public policy issue does not constitute campaign intervention include: (1) the absence of factors (a) through (g) above; (2) the

communication identifies specific legislation, or a specific non-electoral event outside the control of the organization, that the organization hopes to influence, such as a legislative vote or other major legislative action (e.g., a hearing before a legislative committee on the subject of the communication); (3) the timing of the communication coincides with a specific non-electoral event outside the control of the organization that the organization hopes to influence; (4) the communication identifies the candidate solely as a government official who is in a position to act on the public policy issue in connection with the specific event (such as a legislator who is eligible to vote on the legislation); and (5) the communication identifies the candidate in a list of key or principal sponsors of the legislation that is the subject of the communication. [See: Rev. Rul. 2004-6, 2004-4 I.R.B. 328 (January 26, 2004); Fact Sheet at 6.]

**Example 9:** University O, a section 501(c)(3) organization, prepares and finances a full page newspaper advertisement that is published in several large circulation newspapers in State V shortly before an election in which Senator C is a candidate for nomination in a party primary. Senator C represents State V in the United States Senate. The advertisement states that S. 24, a pending bill in the United States Senate, would provide additional opportunities for State V residents to attend college, but Senator C has opposed similar measures in the past. The advertisement ends with the statement ,Call or write Senator C to tell him to vote for S. 24.Š Educational issues have not been raised as an issue distinguishing Senator C from any opponent. S. 24 is scheduled for a vote in the United States Senate before the election, soon after the date that the advertisement is published in the newspapers. Even though the advertisement appears shortly before the election and identifies Senator C's position on the issue as contrary to O's position, University O has not violated the political campaign intervention prohibition because the advertisement does not mention the election or the candidacy of Senator C, education issues have not been raised as distinguishing Senator C from any opponent, and the timing of the advertisement and the identification of Senator C are directly related to the specifically identified legislation University O is supporting and appears immediately before the United States Senate is scheduled to vote on that particular legislation. The candidate identified, Senator C, is an officeholder who is in a position to vote on the legislation. [Situation 14, Rev. Rul. 2007-41.]

**Example 10:** Organization R, a section 501(c)(3) organization that educates the public about the need for improved public education, prepares and finances a radio advertisement urging an increase in state funding for public education in State X, which requires a legislative appropriation. Governor E is the governor of State X. The radio advertisement is first broadcast on several radio stations in State X beginning shortly before an election in which Governor E is a candidate for re election. The advertisement is not part of an ongoing series of substantially similar advocacy communications by Organization R on the same issue. The advertisement cites numerous statistics indicating that public education in State X is under funded. While the advertisement does not say anything about Governor E's position on funding for public education, it ends with ,Tell Governor E what you think about our under-funded schools.Š In public appearances and campaign literature, Governor E's opponent has made funding of public education an issue in the campaign by focusing on Governor E's veto of an income tax increase the previous year to increase funding of public education. At the time the advertisement is broadcast, no legislative vote or other major legislative activity is scheduled in the State X legislature on state funding of public education. Organization R has violated the political campaign prohibition because the advertisement identifies Governor E, appears shortly before an

election in which Governor E is a candidate, is not part of an ongoing series of substantially similar advocacy communications by Organization R on the same issue, is not timed to coincide with a non election event such as a legislative vote or other major legislative action on that issue, and takes a position on an issue that the opponent has used to distinguish himself from Governor E. [Situation 15, Rev. Rul. 207-41.]

**Mailing Lists.** Selling, renting or lending mailing lists to candidates, political parties, or PACs on a preferential basis, or without charge, violates the political intervention prohibition. IRS has indicated that a section 501(c)(3) organization "that regularly sells or rents its mailing list to other organizations [at fair market rate] will not violate the political campaign activity prohibition if it sells or rents the list to a candidate on the same terms the list is sold or rented to others, provided the list is equally available to all other candidates on the same terms." To satisfy this equal availability standard, an organization must be able to show that all candidates were afforded a reasonable opportunity to acquire the list. To insure that the list is equally available to all candidates, IRS has advised that the organization inform candidates of the availability of the list. Prudence dictates that if a Catholic organization has never before rented or sold its mailing list, its first sale or rental should not be to a candidate, political party or PAC. [See: *Election Year Issues* at 383-4.]

Factors to be considered in determining whether the selling, renting or lending of mailing lists constitutes political campaign intervention include: (a) whether the mailing lists are available to candidates in the same election on an equal basis; (b) whether mailing lists are available only to candidates and not to the general public; (c) whether the fees charged to candidates for mailing lists are the customary and usual fees; and (d) whether the mailing list activity is an ongoing activity or whether it is conducted only for a particular candidate. [See: Rev. Rul. 2007-41 at 1425.]

**Example 11:** Theater L is a section 501(c)(3) organization. It maintains a mailing list of all of its subscribers and contributors. Theater L has never rented its mailing list to a third party. Theater L is approached by the campaign committee of Candidate Q, who supports increased funding for the arts. Candidate Q's campaign committee offers to rent Theater L's mailing list for a fee that is comparable to fees charged by other similar organizations. Theater L rents its mailing list to Candidate Q's campaign committee. Theater L declines similar requests from campaign committees of other candidates. Theater L has intervened in a political campaign. [Situation 18, Rev. Rul. 2007-41.]

**Multiple Activities.** When assessing potential violations of the political campaign intervention prohibition, a Catholic organization should not evaluate activities in isolation, since the interaction of activities may constitute political campaign intervention. For example, a parish may distribute a nonbiased voter guide on the same Sunday as its pastor delivers a homily discussing the Church's position on one of the issues covered in the voter guide. Neither activity in isolation would be problematic. Combined, they result in political campaign intervention. [See: Rev. Rul. 2007-41 at 1422.]

**News Stories.** Many Catholic organizations publish periodicals containing information of interest to readers and discussion of issues deemed important to the publishing organization. During election periods, coverage may include news stories that report candidates and campaign activities. Coverage of such stories does not *per se* violate the political campaign intervention

prohibition. The threshold distinction is between legitimate news coverage and attempts to promote or oppose a candidate through editorial policy. Analysis in this area is highly fact-sensitive. IRS has identified the following areas of relevant inquiry: (1) how does the publication normally cover news stories; (2) does the publication have a policy of covering only particular candidates; (3) does the publication, in fact, cover only particular candidates; and (4) is the publication's coverage slanted to show any particular candidate in a favorable or unfavorable light? [See: *Election Year Issues* at 369-70.]

**PACs.** A Catholic organization may not establish a PAC, nor may it provide any financial or in-kind support to a PAC. Section 527 defines a PAC as a political action committee whose purpose is to influence the election of any individual to public office, whether as a separate organization or as a segregated fund of an organization. A PAC is distinguishable from a section 501(c)(4) organization, which is permitted to engage in political campaign intervention provided it is not its primary activity. [See: Treas. Reg. § 1.527-6(g); *Election Year Issues* at 365-6; Rev. Rul. 81-95, 1981 C.B. 332.]

FEC has concluded that directors of a section 501(c)(3) organization, may, *in their individual capacities*, establish an independent, non-connected PAC without violating the FECA prohibition on corporate political involvement. This FEC ruling has no direct bearing on section 501(c)(3) of the IRC. The political campaign intervention prohibition does not apply to the political activity of individuals. Whether creation of a PAC *truly* constitutes an individual action independent of any 501(c)(3) organization is a question of fact. IRS has identified the following factors as suggestive that a PAC is *not independent* of a section 501(c)(3) organization: (a) similarity of name between the PAC and the section 501(c)(3) organization; (b) excessive overlap of directors; and (c) sharing of facilities between the section 501(c)(3) organization and the PAC. [FEC Advisory Opinion 1984-12 (May 31, 1984); *Election Year Issues* at 366.]

**Paid Political Advertising.** A Catholic organization may not provide political advertising to a candidate, political party or PAC free, at a reduced rate, or on a selective basis. IRS has stated that acceptance of paid political ads in exempt organization newspapers, periodicals, and other publications generally will not violate the political campaign prohibition, provided: (a) the organization accepts political advertising on the same basis as other non-political advertising; (b) political advertising is identified as paid political advertising; (c) the organization expressly states that it does not endorse any candidate; and (d) advertising is available to all candidates on an equal basis. IRS places particular emphasis on the manner in which political advertising is solicited. One identified negative factor is solicitation of ads from certain candidates that support an organization's views, but mere acceptance (without solicitation) of ads from other candidates. It is important to emphasize that once a Catholic organization accepts one paid political advertisement, it cannot selectively decline to accept others. [See: *Election Year Issues* at 384.]

Factors to be considered in determining whether the provision of paid political advertising constitutes political campaign intervention include: (a) whether advertising is available to candidates in the same election on an equal basis; (b) whether advertising is available only to candidates and not to the general public; (c) whether the fees charged to candidates for advertising are the customary and usual fees; and whether the advertising activity is an ongoing activity or whether it is conducted only for a particular candidate. [See: Rev. Rul. 2007-41 at

1425.]

**Policy Considerations:** Catholic organizations should develop and document their political advertising policies in advance of election periods. Some dioceses have adopted policies to accept political ads only from candidates or their official committees, or to limit the type of candidate information that may be included in such ads. Whatever political advertising policy is adopted, it should be followed consistently. All political ads should be identified prominently as paid political ads, with the sponsoring organization identified. Fees received from political ads, like other non-related advertising, are subject to unrelated business income tax.

**Parking Lots.** The parking lots of most Catholic churches and other Catholic organizations are classified as private property. They do not qualify as public forums to which First Amendment free speech protections attach. Although some cases have concluded that parking lots are public forums, these cases dealt with parking lots adjacent to commercial venues, such as shopping malls. Church parking lots are easily distinguished, in terms of purpose, use and access, from commercial parking lots, community shopping centers and malls. As such, Catholic organizations generally have the right to regulate access to their parking lots, including access for political leafleting. Catholic organizations should consult local legal counsel if questions arise about the proper classification of their parking lots. If a parking lot is classified as private property, a Catholic organization should not authorize the distribution of partisan campaign materials or biased voter education materials in the lot. Parking lots are distinguishable from public streets and sidewalks adjacent to Catholic organizations. These spaces generally are classified as public property over which the Catholic organization lacks control over access. [See, e.g., *Robins v. Pruneyard Shopping Center*, 23 Cal.3d 899, 592 P.2d 341 (1979), *aff'd*, 100 S.Ct. 2035 (1980); *New Jersey Coalition Against War in Middle East v. J.M.B. Realty*, 650 A.2d 757 (1994), *cert. denied*, *Short Hills Associates v. New Jersey Coalition Against War in Middle East*, 516 U.S. 812 (1995).]

**Photo Ops.** It is not unusual, during the heat of a campaign, for a candidate or campaign organization to contact a Catholic organization requesting some accommodation, which might range from a photo opportunity at a Catholic school, health care facility or homeless shelter, a "meet and greet" with the bishop or pastor, an appearance at a sponsored event, to other forms of access to Catholic populations. It is difficult to generalize about the appropriateness of such requests from a section 501(c)(3) perspective. In addition, (arch)dioceses may have local policies regulating such access. A Catholic organization receiving an accommodation request should inform the candidate immediately of its status as a section 501(c)(3) organization, the limitations imposed by the political campaign intervention prohibition, and the need for further consultation. The organization should then contact the (arch)diocese concerning the existence of any local policy governing the request. If no local policy would bar the request, local legal counsel should be consulted to evaluate the applicability of the political campaign intervention prohibition.

**Polling Places.** Catholic organizations, particularly schools, frequently permit local election authorities to utilize their auditorium and gymnasium facilities to serve as polling places on election day. This activity is a manifestation of civic duty, is nonpartisan, and does not, by itself, constitute a violation of the section 501(c)(3) political campaign intervention prohibition. Any



limited campaign leafleting or signage permitted outside polling places under local election rules, which is conducted by local campaign volunteers, should not be attributed to the Catholic organization.

**Public Forums, Debates, Candidate Nights.** Catholic organizations may sponsor unbiased public forums, debates, candidate nights and similar activities, in which candidates explain their views to the public. The sponsoring organization may not indicate its views on the issues being discussed, comment on candidates' responses, or in any other way indicate bias for or against a particular candidate, party or position. IRS has identified the following factors as important to a favorable determination on candidate forums: (a) all legally qualified candidates are invited to participate; (b) the questions are prepared and presented by an independent nonpartisan panel; (c) the topics discussed cover a broad range of issues of interest to the public; (d) each candidate has an equal opportunity to present his or her views on the issues discussed; (e) the moderator does not comment on the questions or otherwise make comments that imply approval or disapproval of any of the candidates; and (f) the candidates are not asked to agree or disagree with positions, agendas, platforms or statements of the sponsoring organization. [See Rev. Rul. 86-95, 1986-2 C.B. 73; Rev. Rul. 66-256, 1966-2 C.B. 210; *Election Year Issues* at 372-75; Rev. Rul. 2007-41 at 1421-2.]

Generally, all bona fide candidates for a particular office should be invited to participate, since a policy of excluding candidates may evidence bias. However, there are circumstances in which candidates may be excluded. For example, a candidate debate during the primary election campaign may be limited to legally qualified candidates seeking the nomination of a particular political party. In addition, if the field of legally qualified candidates is large, the FEC has indicated that the sponsoring organization may limit participation based upon pre-established objective criteria. Any debate must include at least two candidates and must not promote or advance one candidate over another. In addition, for a general election, the sponsoring organization may not use nomination by a particular political party as the sole objective criterion for participation. [See *Fulani v. Brady*, 809 F.Supp. 1112 (1993), *aff'd*, *Fulani v. Bentsen*, 35 F.3d 49 (1994); *Fulani v. League of Women Voters Education Fund*, 882 F.2d 621 (2d Cir. 1989); TAM 9635003 (August 30, 1996) (participation limited to candidates with 15% popular support); 11 C.F.R. § 110.13(b).]

IRS has also identified the following criteria for determining whether a section 501(c)(3) organization that fails to invite all legally qualified candidates to its debate has violated the political campaign activity prohibition: (a) whether inviting all legally qualified candidates was impractical; (b) whether the organization adopted reasonable, objective criteria for determining which candidates to invite; (c) whether the criteria were applied consistently and non-arbitrarily to all candidates; and (d) whether other relevant factors indicate the debate was conducted in a neutral, nonpartisan manner [See: *Election Year Issues* at 374; TAM 9635003 (April 19, 1996).]

**Example 12:** President E is the president of Society N, a historical society that is a section 501(c)(3) organization. In the month prior to the election, President E invites the three Congressional candidates for the district in which Society N is located to address the members. One each at a regular meeting held on three successive weeks. Each candidate is given an equal opportunity to address and field questions on a wide variety of topics from the members. Society N's publicity announcing the dates

for each of the candidate's speeches and President E's introduction of each candidate include no comments on their qualifications or any indication of a preference for any candidate. Society N's actions do not constitute political campaign intervention. [Situation 7, Rev. Rul. 2007-41.]

**Example 13:** The facts are the same as Example 12 except that there are four candidates in the race rather than three, and one of the candidates declines the invitation to speak. In the publicity announcing the dates for each of the candidate's speeches, Society N includes a statement that the order of the speakers was determined at random and the fourth candidate declined the Society's invitation to speak. President E makes the same statement in his opening remarks at each of the meetings where one of the candidates is speaking. Society N's actions do not constitute political campaign intervention. [Situation 8, Rev. Rul. 2007-41.]

If all candidates appear at the public forum to speak, all candidates may distribute their campaign literature. If all candidates do not appear to speak, no distribution of campaign literature should be permitted. Designated candidate surrogates generally may substitute for candidates. [See: *Election Year Issues* at 375.]

**Pulpit Appearances.** Appearances by candidates in the pulpit or at other worship services are governed by the same rules applicable to appearances at Church events generally (see "*Appearances at Church Events*" above). Thus, if an individual is invited to appear in a candidate capacity, equal access must be provided to other candidates for the same office. On the other hand, if the candidate is invited to appear in a non-candidate capacity, it is not necessary to provide equal access to other candidates.

**Example 14:** Church P is located in the state capital. Minister G customarily acknowledges the presence of any public officials present during services. During the state gubernatorial race, Lieutenant Governor Y, a candidate, attended a Wednesday evening prayer service in the church. Minister G acknowledged the Lieutenant Governor's presence in his customary manner, saying, "We are happy to have worshipping with us this evening Lieutenant Governor Y." Minister G made no reference in his welcome to the Lieutenant Governor's candidacy or the election. Minister G's actions do not constitute political campaign intervention by Church P. [See: Example 1, Pub. 1828 at 9 (right-hand column).]

**Example 15:** Minister E is the minister of Church N. In the month prior to the election, Minister E invited the three Congressional candidates for the district in which Church N is located to address the congregation, one each on three successive Sundays, as part of regular worship services. Each candidate was given an equal opportunity to address and field questions on a wide variety of topics from the congregation. Minister E's introduction of each candidate included no comments on their qualifications or any indication of a preference for any candidate. The actions do not constitute political campaign intervention by Church N. [See: Example 1, Pub. 1828 at 9 (left-hand column).]

**Example 16:** Minister F is the minister of Church O. The Sunday before the November election, Minister F invited Senate Candidate X to preach to her congregation during worship services. During his remarks, Candidate X stated, "I am asking not only for your votes, but for your enthusiasm and dedication, for your willingness to go the extra mile to get a very large turnout on Tuesday." Minister F invited no other candidate to address her congregation during the Senatorial campaign. Because these activities took place during official church services, they are attributed to Church O. By selectively

providing church facilities to allow Candidate X to speak in support of his campaign, Church O's actions constitute political campaign intervention. [See: Example 2, Pub. 1828 at 9.]

**Rating Candidates.** The rating of candidates for character, experience and professional ability, even on a non-partisan basis, violates the political campaign intervention prohibition. The rating of candidates based on their agreement with a Catholic organization's positions or the labeling of candidates as pro-life or anti-family or by using symbols or signs, likewise violates the political campaign intervention prohibition. [See: Rev. Rul. 67-71, 196701 C.B. 125 [rating candidates for school board]; G.C.M. 39441 (September 28, 1985); *Association of the Bar of the City of New York v. Commissioner*, 858 F.2d 876 (2d Cir. 1988), *cert. denied*, 109 S.Ct. 1768 (1989).]

**Renting Facilities.** From time to time, Catholic organizations are asked to rent their facilities to candidates or political parties for partisan activities, such as party conventions or caucuses, candidate rallies, etc. Such requests tend to occur more frequently in areas of the country where alternative large-capacity venues are scarce. Rental of Catholic organizational facilities for such purposes is not per se prohibited. However, (arch)dioceses may have local policies regulating the use of Catholic facilities. If there is no local policy barring rental of Catholic facilities for partisan political activities, appropriate policies regarding such use should be developed, including the following: (a) fair market rate must be charged; (b) the facility may not be provided free or at a reduced charge; (c) if the facility is made available for rental only to affiliated Catholic users, it should not be made available to a candidate or political party; (d) if the facility is made available for rental to outside users, the facility may be made available to a candidate or political party on the same basis as other outside users; (e) the facility should be equally available for all candidates or parties, with no preference for any particular candidate or party; and (f) the Catholic organization should not advertise, promote, or provide other services in connection with an event taking place in its facility. Prudence dictates that if a Catholic organization has never rented its facility, its first rental should not be to a candidate or political party.

**Example 17:** Museum K is a section 501(c)(3) organization. It owns an historic building that has a large hall suitable for hosting dinners and receptions. For several years, Museum K has made the hall available for rent to members of the public. Standard fees are set for renting the hall based on the number of people in attendance, and a number of different organizations have rented the hall. Museum K rents the hall on a first come, first served basis. Candidate P rents Museum K's social hall for a fundraising dinner. Candidate P's campaign pays the standard fee for the dinner. Museum K is not involved in political campaign intervention as a result of renting the hall to Candidate P for use as the site of a campaign fundraising dinner. [Situation 17, Rev. Rul. 2007-41.]

**Signs on Church Property.** Placement of political signs is essentially an attribution issue. With the exception of polling places (see "*Polling Places*" above), political signs should not be placed on property owned by Catholic organizations or rented by Catholic organizations for official business. Section 501(c)(3) does not prohibit the placement of political signs on the personally-owned property of Church officials or employees.

**Student Activities.** As section 501(c)(3) organizations, Catholic educational institutions are prohibited from engaging in political campaign activity, and should consult *Appearances by Candidates* [see above] as appropriate. Section 501(c)(3) does not prohibit the individual political

activity of faculty, staff, or students. Catholic educational institutions often make facilities available for student activities. It does not violate the political campaign intervention prohibition if school facilities are made available for student political groups or activities on the same basis as facilities are made available for other student groups and activities. Student political activity required as part of a course assignment will not be attributed to the school if the assignment was germane to the course and the school did not influence the choice of candidates. [See: *Election Year Issues* at 377-8; Rev. Rul. 72-512, 1972-2 C.B. 246.]

**Example 18:** A university provided office space, financial support, and faculty advisors for a student newspaper that was distributed primarily within the university community. The newspaper published students' editorials on political matters. The editorial page contained a prominent disclaimer that the views expressed were those of the students and not the university. The student editorials were not political campaign intervention attributable to the university. [See: Rev. Rul. 72-513, 1972-2 C.B. 246.]

**Example 19:** University X is a section 501(c)(3) organization. X publishes an alumni newsletter on a regular basis. Individual alumni are invited to send in updates about themselves which are printed in each edition of the newsletter. After receiving an update letter from Alumnus Q, X prints the following: „Alumnus Q, class of ,XX is running for mayor of Metropolis.Š The newsletter does not contain any reference to this election or to Alumnus Q's candidacy other than this statement of fact. University X has not intervened in a political campaign. [Situation 12, Rev. Rul. 2007-41.]

**Voter Guides -- Candidate Questionnaires.** Candidate Questionnaires. Polling candidates or asking candidates to complete questionnaires designed to elicit their positions on various issues is a neutral activity, assuming that the questions themselves do not exhibit bias. It is only when the results are disseminated during an election campaign that the political campaign activity prohibition becomes a potential issue. IRS has identified the following criteria for determining whether publication or distribution of candidate questionnaire results violates the political campaign activity prohibition: (a) whether the questionnaire is sent to all candidates; (b) whether candidates are given a reasonable period of time to respond; (c) if given a limited choice of responses, whether candidates are also given a reasonable opportunity to offer explanations that are included in the voter guide; (d) whether all responses are published; (e) whether the questions indicate bias toward the sponsoring organization's preferred answer; (f) whether the responses are compared to the sponsoring organization's positions on the issues; (g) whether the responses are published as received, without editing by the sponsoring organization; and (h) whether a wide range of issues of interest to voters is covered. The range of issues criterion is contextual; it depends on the particular office being sought. Thus, candidates for local school board need not be queried on foreign policy. Rather, they can be questioned on a broad range of education issues relevant to school board office. [See: Rev. Rul. 2007-41 at 1421; *Election Year Issues* at 371-2; Rev. Rul. 78-248, 1978-1 C.B. 154, Situation 4.]

**Bias:** Although the IRC does not define "bias", as a general rule, activities or publications will be considered biased if they indicate or imply either (a) that a candidate agrees or disagrees with a Catholic organization's position, or (b) that a Catholic organization agrees or disagrees with a candidate's position. Whether an activity or publication is biased depends upon all relevant facts and circumstances, including context, format, content, and manner of conduct, publication or distribution.

All voter education publications and activities should include a statement of their educational purpose and a disclaimer of any intent to endorse or oppose any candidate, political party, or PAC.

IRS has concluded that an organization that published the positions of all candidates in a particular race on a wide variety of issues selected solely on the basis of their importance to the electorate as a whole did not violate the political campaign intervention prohibition, where neither the questionnaire nor the voter guide evidenced bias or preference in content or structure. Conversely, publication of responses to a candidate questionnaire that evidenced bias on certain issues did violate the political campaign intervention prohibition. [See: Rev. Rul. 78-248, 1978-1 C.B. 154, Situations 2 and 3.]

**Example 20:** Church R distributes a voter guide prior to elections. The voter guide consists of a brief statement from the candidates on each issue made in response to a questionnaire sent to all candidates for governor on State I. The issues on the questionnaire cover a wide variety of topics and were selected by Church R based solely on their importance and interest to the electorate as a whole. Neither the questionnaire nor the voter guide, through their content or structure, indicates a bias or preference for any candidate or group of candidates. Church R is not participating or intervening in a political campaign. [See: Example 1, Pub. 1828 at 10.]

**Example 21:** Church S distributes a voter guide during an election campaign. The voter guide is prepared using the responses of candidates to a questionnaire sent to candidates for major public offices. Although the questionnaire covers a wide range of topics, the wording of the questions evidences a bias on certain issues. By using a questionnaire structured in this way, Church S is participating or intervening in a political campaign. [See: Example 2, Pub. 1828 at 10 (right-hand column).]

Questionnaires should be distributed to all candidates, and all candidates should be encouraged to respond. No other coordination, cooperation, or consultation with candidates, their committees, etc. should take place. Failure of all candidates to respond, may, in certain circumstances, require re-evaluation of the appropriateness of disseminating questionnaire responses. If only one candidate in a particular race responds, the questionnaire responses may not be useable. FEC rules governing voter guides by section 501(c)(3) organizations require participation of at least two candidates. Catholic organizations should not develop position statements for candidates that fail to respond, and should consult local legal counsel for further analysis of particular fact situations involving candidate questionnaires. [See: 11 C.F.R. § 114.4 (c)(5); *Election Year Issues* at 372, fn. 21.]

**Outside Voter Guides:** Catholic organizations should be wary of outside groups seeking to distribute their voter education materials. Distribution of a biased voter guide constitutes political campaign intervention, even if the voter guide was prepared by another organization. Outside voter education materials should be approached with extreme caution, including materials accompanied by outside legal opinions. Among other things, the issues covered in outside voter education materials typically do not illustrate the wide range of issues of importance to the Church, but rather reflect the issue focus of the preparing organization. In addition, their preparation, content, format and presentation may not satisfy the requirements of section 501(c)(3) applicable to Catholic organizations. Often, the organizations preparing these voter education materials are not section 501(c)(3) organizations, and

thus are not subject to the political campaign intervention prohibition. The fact that it may be permissible for the preparing organization to distribute a voter guide does not make it appropriate for Catholic organizations to do so. (Arch)dioceses are encouraged to adopt policies prohibiting distribution of any voter education materials that have not been approved or made available by the (arch)diocese or state Catholic conference. Local legal counsel should be consulted before a Catholic organization agrees to distribute voter education materials prepared by outside organizations.

**Voter Guides < Incumbents Voting Records.** Compilation of incumbents' voting records is a common method of voter education. Voting records may also be compiled as part of an organization's lobbying efforts. Whether the publication and distribution of incumbents' voting records violates the political campaign activity prohibition depends on an evaluation of all the relevant facts and circumstances, including: (a) whether incumbents are identified as candidates; (b) whether incumbents' positions are compared to the positions of other candidates; (c) whether incumbents' positions are compared to the sponsoring organization's positions; (d) the timing, extent, and manner of distribution; and (e) the breadth or narrowness of the issues presented in the voting record. IRS has concluded that a section 501(c)(3) organization that published and distributed, during an election campaign, the voting records of all members of Congress on a wide range of subjects, did not violate the political campaign intervention prohibition. The organization conducted this activity annually, whether there was an election or not. The voting records contained no editorial opinions and did not indicate approval or disapproval of incumbents' votes. [See: Rev. Rul. 78-248, 1978-1 C.B. 154, Situation 1; *Election Year Issues* at 370-71.]

On the other hand, IRS has concluded that the distribution during an election campaign of a biased voting record, *i.e.* one that indicated the organization's position and whether the legislator voted in accordance with that position, could avoid violating the political campaign intervention prohibition only in extremely limited circumstances. The criteria established by IRS are: (1) the voting record must not identify candidates for re-election; (2) its distribution must not be *timed* to coincide with any election, but rather must be one of a series of regularly distributed voting records; (3) distribution must not be *targeted* to areas where elections are occurring; and (4) the voting record must *not* be *broadly disseminated* to the electorate, but rather disseminated only to a limited group, e.g., members of the organization or subscribers to its publication. Organizations frequently rely upon this ruling to justify wide dissemination of biased voter guides among the electorate. Such reliance is misplaced. [See: Rev. Rul. 80-282, 1980-2 C.B. 178.]

In addition, IRS has taken the position that broad distribution of voting records or other voter education materials that do not cover a wide variety of issues violates the political campaign intervention prohibition, *even in the absence of overt bias*. [See: Rev. Rul. 78-248, 1978-1 C.B. 154, Situation 4.]

**Voter Registration/Get-Out-the-Vote Drives.** Catholic organizations may sponsor voter registration and get-out-the-vote drives, provided that no bias for or against any candidate, political party, or voting position is evidenced. Such bias would be indicated by distribution of partisan literature or materials indicating the sponsoring organization's positions in connection with the voter registration or get-out-the-vote drive, by targeting registration or get-out-the-vote drives toward individuals who support the organization's positions or a particular candidate or party, or by coordinating the drive with candidates or their committees. Catholic organization voter registration or get-out-the-vote efforts should not be conducted: (a) in cooperation with any

political campaign; (b) according to the identity of the candidates; (c) based upon a candidate's or party's agreement or disagreement with the sponsoring organization's positions; or (d) in a manner targeting members of a particular party.

IRS has offered the following factors for determining whether an organization sponsoring a voter registration or get-out-the-vote drive has violated the political campaign intervention prohibition: (1) whether no candidate is mentioned or depicted or all candidates for a particular office are mentioned or depicted without favoring any candidate over any other; (2) whether communications about the drive names no political party except for identifying the party affiliation of all candidates named or depicted; (3) whether communications about the drive are limited to urging acts such as voting and registering to vote and to describing the hours and places of registration and voting; and (4) whether all services offered in connection with the drive are made available without regard to the voter's political preference.

**Example 22:** B, a section 501(c)(3) organization that promotes community involvement, sets up a booth at the state fair where citizens can register to vote. The signs and banners in and around the booth give only the name of the organization, the date of the next upcoming statewide election, and notice of the opportunity to register. No reference to any candidate or political party is made by the volunteers staffing the booth or in the materials available at the booth, other than the official voter registration forms which allow registrants to select a party affiliation. B is not engaged in political campaign intervention when it operates this voter registration booth. [Situation 1, Rev. Rul. 2007-41.]

**Example 23:** C is a section 501(c)(3) organization that educates the public on environmental issues. Candidate G is running for the state legislature and an important element of her platform is challenging the environmental policies of the incumbent. Shortly before the election, C sets up a telephone bank to call registered voters in the district in which Candidate G is seeking election. In the phone conversations, C's representative tells the voter about the importance of environmental issues and asks questions about the voter's views on these issues. If the voter appears to agree with the incumbent's position, C's representative thanks the voter and ends the call. If the voter appears to agree with Candidate G's position, C's representative reminds the voter about the upcoming election, stresses the importance of voting in the election and offers to provide transportation to the polls. C is engaged in political campaign intervention when it conducts this get-out-the-vote drive. [Situation 2, Rev. Rul. 2007-41.]

Targeting voter registration drives at historically disadvantaged groups, whether based on economic status, race, gender or language, generally should not be objectionable. In addition, IRS has indicated that voter registration lists may be used to identify unregistered voters, but not to target voters who are registered as belonging to a specific party. [See: *Election Year Issues* at 378-9; *Cerny, M., Campaigns, Candidates and Charities: Guideposts for All Charitable Institutions*, 19 N.Y.U. Conference on Tax Planning for 501(c)(3) Organizations (1991), pp. 5.13 - 5.17; PLR 9223050 (March 10, 1992) (grants for registering homeless people to vote); 11 C.F.R. §114.4(d) (FEC provisions).]

**Websites.** No special rules apply to the prohibition against political campaign intervention with respect to information communicated through an exempt organization's website. Distribution of communications that constitute political campaign intervention via an exempt organization

website will be treated in the same manner as if the organization had distributed printed materials. An exempt organization is responsible for the content of another organization's webpage linked from its website, and should monitor the content of linked webpages. Links to candidate-related materials are not per se problematic. IRS will evaluate all facts and circumstances with respect to candidate-related links, including: the context for the link on the exempt organization's website; whether all candidates are represented; the exempt purpose, if any, served by offering the link; and the directness of the links between the organization's website and the webpage containing materials favoring or opposing candidates. [Rev. Rul. 2007-41 at 1425-6.]

**Example 24:** Church P, a section 501(c)(3) organization, maintains a web site that includes such information as biographies of its ministers, times of services, details of community outreach programs, and activities of members of its congregation. B, a member of the congregation of Church P, is running for a seat on the town council. Shortly before the election, Church P posts the following message on its web site, "Lend your support to B, your fellow parishioner, in Tuesday's election for town council." Church P has intervened in a political campaign on behalf of B. [Situation 21, Rev. Rul. 2007-41..]

**Example 25:** M, a section 501(c)(3) organization, maintains a web site and posts an unbiased, nonpartisan voter guide that is prepared consistent with the principles discussed in the voter guide section above. For each candidate covered in the voter guide, M includes a link to that candidate's official campaign web site. The links to the candidate web sites are presented on a consistent neutral basis for each candidate, with text saying "For more information on Candidate X, you may consult [URL]." M has not intervened in a political campaign because the links are provided for the exempt purpose of educating voters and are presented in a neutral, unbiased manner that includes all candidates for a particular office. [Situation 19, Rev. Rul. 2007-41.]

**Example 26:** Hospital N, a section 501(c)(3) organization, maintains a web site that includes such information as medical staff listings, directions to Hospital N, and descriptions of its specialty health programs, major research projects, and other community outreach programs. On one page of the web site, Hospital N describes its treatment program for a particular disease. At the end of the page, it includes a section of links to other web sites titled "More Information." These links include links to other hospitals that have treatment programs for this disease, research organizations seeking cures for that disease, and articles about treatment programs. This section includes a link to an article on the web site of O, a major national newspaper, praising Hospital N's treatment program for the disease. The page containing the article on O's web site contains no reference to any candidate or election and has no direct links to candidate or election information. Elsewhere on O's web site, there is a page displaying editorials that O has published. Several of the editorials endorse candidates in an election that has not yet occurred. Hospital N has not intervened in a political campaign by maintaining the link to the article on O's web site because the link is provided for the exempt purpose of educating the public about Hospital N's programs and neither the context for the link, nor the relationship between Hospital N and O nor the arrangement of the links going from Hospital N's web site to the endorsement on O's web site indicate that Hospital N was favoring or opposing any candidate. [Situation 20, Rev. Rul. 2007-41.]



The following information posted on a Catholic organization website or contained in an e-mail communication sent by a Catholic organization can be expected to constitute political campaign intervention: (a) selective links to websites maintained by a candidate, PAC or political party; (b) endorsements or statements of opposition of any candidate; (c) biased voter education materials or links to same; and (d) links to other webpages that support or oppose candidates. Catholic organizations should seek local legal advice before placing any political content or links to political content on their websites.

***How is the political campaign prohibition enforced?*** ? The political campaign activity prohibition of section 501(c)(3) has been interpreted as absolute. Accordingly, any violation of the restriction may result in revocation of exempt status and consequent loss of deductible contributions. The following excise tax penalties may be imposed *in addition to* revocation of exemption. As a general rule, however, IRS will impose the excise tax penalties in lieu of revocation of exemption if the violation of the political campaign intervention prohibition is unintentional, small in amount, and the organization has adopted procedures to prevent future similar violations. [See: *Election Year Issues* at 354.]

Section 4955 imposes a two-tier excise tax on exempt organizations and their management for political expenditures made in contravention of section 501(c)(3). The exempt organization is subject to an initial 10% tax on each political expenditure. If the expenditure is not corrected, an additional tax equal to 100% of the expenditure will be imposed on the exempt organization. The initial tax may be abated if the organization establishes that the political expenditure was not willful and flagrant. In addition, a 2½% tax will be imposed on an organization *manager* who knowingly agrees to a political expenditure, unless such agreement is not willful or is due to reasonable cause. If the manager refuses to agree to correction, an additional 50% tax is imposed. For any single political expenditure, the first-tier tax on managers may not exceed \$5,000 and the second-tier tax may not exceed \$10,000. For these purposes, "manager" is defined as an officer, director or trustee, or another individual with comparable responsibilities, and includes an employee of the organization having authority or responsibility with respect to the political expenditure.

Further, IRS may seek immediate determination and assessment of income and excise taxes due on account of *flagrant* political expenditures. IRS also may bring action in United States District Court seeking an injunction barring further political expenditures. IRS first must notify the organization of its intention to seek an injunction unless the organization immediately ceases making political expenditures, and must also conclude there has been a flagrant violation of the political activity prohibition and that injunctive relief would be appropriate to prevent further political expenditures. [See: I.R.C. §§ 4955, 685, 7409(a)(1), and 7409(a)(2); *Election Year Issues* at 353-63.]

***Are churches and religious organizations targeted for enforcement of the political campaign intervention prohibition?*** No. In fact, IRS must follow special procedures before any inquiry can be made with respect to the possible violation of the political intervention prohibition by a church. IRS may initiate such an inquiry only if the Director, Exempt Organizations, Examinations, reasonably believes, based on a written statement of the facts and circumstances, that a church may not qualify for section 501(c)(3) exemption, *e.g.*, on account of a violation of the political campaign intervention prohibition, or may not be paying tax on an unrelated business or other taxable activity. Most often, IRS inquiries about potential violations of the political campaign activity prohibition by churches are initiated on the basis of facts reported in the media or complaints

filed by third parties. [See: I.R.C. § 7611; Pub. 1828 at 22.]

***Are Catholic organizations subject to other laws regarding political activity?*** Catholic organizations may also be subject to state or local laws and regulations regarding political activity and to certain provisions of the Federal Election Campaign Act ("FECA"), as amended. FECA generally applies only to campaigns for federal office. As a practical matter, because section 501(c)(3) contains an absolute prohibition against political campaign activity, FECA has not been an issue for Catholic organizations. Activities potentially subject to regulation under FECA are already prohibited to Catholic organizations under section 501(c)(3). It is possible, however, that FECA may in the future be interpreted to regulate activities that are *permitted* for Catholic organizations under section 501(c)(3). In that event, Catholic organizations would need to concern themselves with the FECA regulatory scheme in addition to that of section 501(c)(3). IRS has stated unequivocally that the "express advocacy" standard of FECA has no application to the determination whether a section 501(c)(3) organization has violated the political campaign intervention prohibition. [See: *Election Year Issues* at 346-7.]

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