



Non-Profit
Public Advocacy and Activism
Without
Jeopardizing Your
501(c)(3) Tax Status

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I. CANDIDATE ENDORSEMENTS STRICTLY PROHIBITED FOR 501(c)(3) NONPROFITS

- The Internal Revenue Code is clear and unequivocal in specifically prohibiting 501(c)(3) organizations from participating or intervening in any political campaign on behalf of, or in opposition to, candidates for public office.
<http://www.irs.gov/charities/charitable/article/0,,id=163395,00.html>.
- See <http://www.irs.gov/newsroom/article/0,,id=130652,00.html>: 501(c)(3)'s are prohibited from engaging in "in any political campaign on behalf of, or in opposition to, any candidate for public office." Further, "These organizations cannot endorse any candidates, make donations to their campaigns, engage in fund raising, distribute statements, or become involved in any other activities that may be beneficial or detrimental to any particular candidate."
- **Non-partisan voter education activities** (including presenting public forums and publishing voter education guides) conducted in a non-partisan manner do not constitute prohibited political campaign activity. In addition, other activities intended to encourage people to participate in the electoral process, such as voter registration and get-out-the-vote drives, would not be prohibited political campaign activity if conducted in a non-partisan manner. Id.
- On the other hand, voter education or registration activities with evidence of bias that (a) would favor one candidate over another; (b) oppose a candidate in some manner; or (c) have the effect of favoring a candidate or group of candidates, will constitute prohibited participation or intervention. Id.
- 501(c)(4), (5) and (6) tax exempt organizations may engage in limited candidate election advocacy, but donors cannot deduct their contributions.

Common Tax Law Restrictions on Activities of Exempt Organizations

The chart below compares seven federal tax law attributes of five common types of tax-exempt organizations. <http://www.irs.gov/charities/article/0,,id=170946,00.html>

	501(c)(3)	501(c)(4)	501(c)(5)	501(c)(6)	527
Receive tax-deductible charitable contributions	YES	NO	NO	NO	NO
Receive contributions or fees deductible as a business expense	YES	YES	YES	YES	NO
Substantially related income exempt from federal income tax	YES	YES	YES	YES	YES
Investment income exempt from federal income tax	LTD*	YES	YES	YES	NO
Engage in legislative advocacy	LTD	YES	YES	YES	LTD
Engage in candidate election advocacy	NO	LTD	LTD	LTD	YES
Engage in public advocacy not related to legislation or election of candidates	YES	YES	YES	YES	LTD

*Private foundations are subject to tax on their net investment income.

II. PERMITTED PUBLIC ADVOCACY ON BALLOT INITIATIVES, LIKE PROP. 8

- A. PUBLIC ADVOCACY IS PERMITTED SO LONG AS THE NONPROFIT STICKS WITHIN SPENDING LIMITS & ELECTS 501(h) STATUS
- B. WITH A 501(h) FILING, 20% OF YOUR TOTAL "*EXEMPT PURPOSE EXPENDITURES*" IS SPENDING LIMIT

- Lobbying and campaign activities for or against ballot measures is permitted within certain broad limitations. Primary among those limitations are certain budgetary restrictions. A nonprofit may spend up to 20 percent of its budget on such activities *if* you elect 501(h) status, which provides certain safe harbors for measuring a public charity's lobbying activity.
- You may elect 501(h) status by filing Form 5768 (a simple, one page form) anytime during the first fiscal year in which you elect to use the status.
- Once Form 5768 is filed, the 501(h) election continues until the nonprofit revokes it.
- Keep track public advocacy expenditures separately in your P&L so you can tell if you are approaching your limit.

- C. WITHOUT A 501(h) FILING, SPENDING MUST BE INSUBSTANTIAL

- When an organization has not filed the proper form electing 501(h) status, the organization's lobbying activities must remain under the IRS's "insubstantial" limitation on spending on ballot measures.
- In the long run, since this type of lobbying activity is obviously important to LGBT nonprofits, these nonprofits need a thorough and detailed understanding of the rules and regulations concerning nonprofit public advocacy. Federal and state tax and elections laws all come into play in a somewhat complex matrix.

III. FUNDING AND GRANT RESTRICTIONS

- Some funders and grant sources impose additional restrictions on nonprofits that received funds from them. For example, the San Francisco City Grant for the Arts grant contract will not allow nonprofits it funds to permit any campaigning at events or parades.
- Section 4.4 of the City Grant for the Arts agreement states: "...no signs urging the election or defeat of any candidate for political office or any initiative will appear in the parade or event."
- These sorts of restrictions are facing court challenges to determine whether they are constitutional in some states and restrictions like this may change.

IV. HOW DOES THIS APPLY TO PRIDE CELEBRATIONS AND PARADES

A. Per 501c3 Rules and Guidelines (IRS)

- Nonprofit organizations are prohibited under federal law from endorsing candidates, legislation, and ballot initiatives. 501c3 tax exempt nonprofits may educate but may not use public funds to promote a partisan position. Nonprofits may not favor one candidate or piece of legislation over another at their events, including pride parades and celebrations.
- Voter Registration and Voter EDUCATION is allowed. Just as the League of Women Voters' may sponsor educational candidate debates, under federal law, if federal law is all that applies in your area, nonprofits producing pride parades could allow the whole spectrum of people running for elected office to have a contingent in the parade. For example, under federal nonprofit law, contingents could wear t-shirts that say, "Vote for Obama" or "Obama for America" as long as the competitors running for the same office, during the same time period are allowed to do the same.
- Nonprofits are not *required* to permit candidates or others to participate, and may exclude entries."

B. City or other Funders may impose stricter restrictions.

- San Francisco Grant for the Arts prohibits all campaigning, so for example, a candidates contingent may not have campaign t-shirts, signs, banners or materials.
- Check your local rules and funders' restrictions.
- Where such restrictions apply, for example,
 - An Obama contingent could walk as "Obama Pride" in support of U.S. Senator Obama" but could not say "Vote for Obama."
 - Office holders may have a booth at the Celebration grounds, but they must restrict it to "Voter Information" (education) and NOT campaign materials.

C. Each Organization Must Set a Clear Policy

- Make sure that all candidates and groups know the rules and expect them to abide by and respect them.
- How the nonprofit approaches any particular violation of its policies depends on all the facts and circumstances of the situation. Nonprofits must make reasonable efforts to request that participants cooperate with and follow the rules. For example, each contingent should be required to attend training and have its own safety monitors. Contingent groups are encouraged to monitor their own participants and be certain they comply with all rules, including safety, prohibitions on campaigning, and so on.

V. RECOMMENDATIONS

In addition to filing for a 501(h) exemption, and before your nonprofit engages in more than insubstantial public advocacy and lobbying activities and expenditures, take these simple steps:

- A senior or executive staff member who is likely to stay with the nonprofit for the long run should be tapped to be personally responsible for mastering the public advocacy and the nonprofit lobbying rules.
- Staff should develop a lobbying and public policy and procedures manual for Board approval, including a proposal concerning whether or not to file a 501(h) election. I cannot emphasize enough how important board review and approval (not rubber stamping) is in this regard.
- A policy with respect to the personal candidate endorsements of any individual who is in a position to control or be identified as representing the nonprofit also be developed, including a complete prohibition against using any nonprofit staff, facilities, email, copy machines or other resources for such endorsements.
- The nonprofit's lawyer and possibly the CPA should review the draft policy and procedure manual and the personal endorsement policy before they go to the board for approval.
- The Board should consider and decide whether to elect 501(h) status.
- The accounting department or bookkeeper should also carefully read and master these materials, and should develop or add to the existing careful accounting procedures to identify lobbying/public policy related costs and monitor that they remain under the 20% limit. Add separate line items in the organization's chart of accounts and budget to clearly identify and track these expenditures;
- After the policy and procedures manual is adopted, the organization should comply with it, and should be certain that all lobbying-related materials are reviewed in its light, including budget expenditures.

The nonprofits risk a great deal if they engage in lobbying activities without doing it properly and securing board approval, including risk of loss of the 501(c)(3) status and imposition of intermediate sanctions.

VII. OTHER SOURCES OF INFORMATION

Some materials are attached. Other materials can be ordered from the Alliance for Justice at www.afj.org.

Those materials will give you the information you need to implement the recommendations above. The materials are very in favor of nonprofits engaging in these types of activities, so they should be reinforcing and give you confidence about how to move forward effectively and with little risk.