

VENABLE[®]_{LLP}

Election Year Issues for 501(c)(3) Organizations

Association of Corporate Counsel Nonprofit Organizations Committee
Legal Quick Hit
May 8, 2012

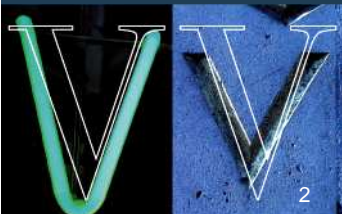
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501(c)(3)s and Political Activities

The Fundamental Tax Rules

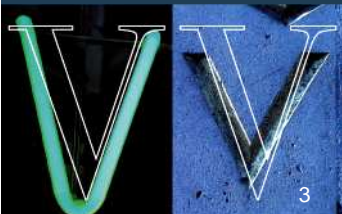
- Political campaign intervention is ***prohibited***.
 - Ban applies to political campaigns at all levels of government—federal, state, and local.
 - Consequences:
 - Loss of tax-exempt status
 - Excise taxes
- Lobbying permitted provided it is not a substantial part of the organization's activities.



501(c)(3)s and Political Activities

Other Important Rules

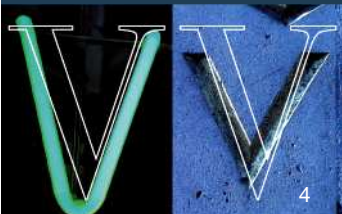
- Campaign finance laws
 - Federal law prohibits corporate political contributions
 - Same rule applies in many, but not all, states
- Lobbying disclosure laws (federal, state, local)
 - Registration
 - Reporting



Political Campaign Intervention

What is it?

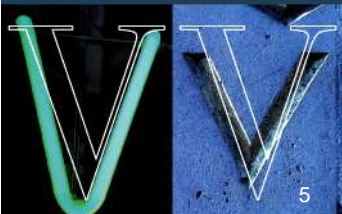
- Any and all activities that **favor** or **oppose** one or more candidates for public office:
 - Candidate endorsements
 - Campaign contributions
 - \$\$
 - Use of facilities or resources
 - Public statements of support or opposition



Permissible Election-Related Activities

What is allowed?

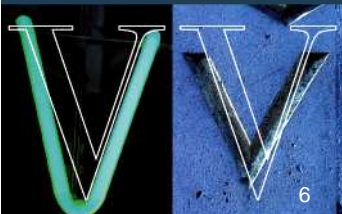
- Voter registration and GOTV drives
- Candidate appearances
- Voter guides/candidate questionnaires
- Issue advocacy
- Activities by individual organization leaders or employees in their personal capacity (not on behalf of the organization)



Permissible Election-Related Activities

The Slippery Slope—Guidelines to Avoid Prohibited Intervention

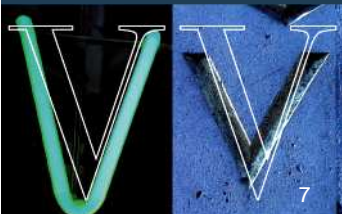
- Always keep it non-partisan
- If sponsoring candidate appearances:
 - Do not indicate support for or opposition to any candidate (explicitly or through biased presentation of topics or questions)
 - Do not allow political fundraising
 - Questions should cover breadth of issues of interest to electorate
 - Provide equal opportunity to all candidates seeking the same office, unless:
 - Appearance is due to official position unrelated to candidacy
 - Candidacy and election not mentioned



Permissible Election-Related Activities

The Slippery Slope—Guidelines to Avoid Prohibited Intervention

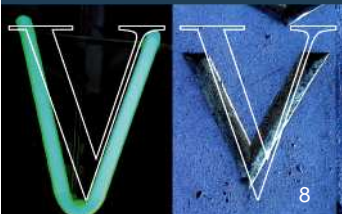
- If producing a voter guide/candidate questionnaire:
 - Questions should be unbiased and cover breadth of issues of interest to electorate
 - Invite participation by all candidates seeking the same office
 - Don't edit responses
- If engaging in issue advocacy:
 - Be careful about messages delivered close-in time to an election
 - Don't refer to candidates (directly or implicitly)



Permissible Election-Related Activities

The Slippery Slope—Guidelines to Avoid Prohibited Intervention

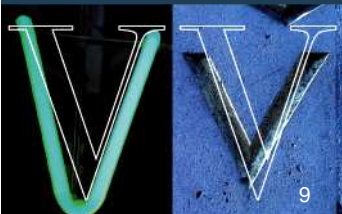
- Establish a policy governing political activities for leaders and staff:
 - No political statements on behalf of the organization
 - Official functions
 - Official newsletters, website, or social media
 - Letterhead
 - No use of the organization's facilities or resources for personal political activities
 - No political activities on work time
 - Computers, telephones, photocopiers, staff support, etc.



Election-Related Activities

The Slippery Slope—Other Considerations

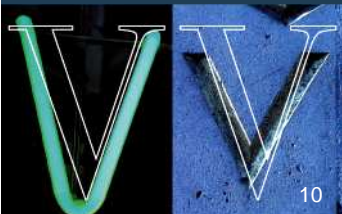
- Websites and social media
 - Links
 - Affiliated 501(c)(4) or 501(c)(6) content
- Business activities
 - e.g., mailing list rental; leasing of space; acceptance of paid political advertising
 - No special treatment of candidates



Election-Related Activities

Use of Affiliated Exempt Organizations

- 501(c)(3) may establish affiliated 501(c)(4) entity
- Tax code permits 501(c)(4) to engage in political campaign intervention, provided not substantial part of the organization's activities
 - But remember campaign finance restrictions!
- 501(c)(4) must have independent funding sources
 - No 501(c)(3) funds for political campaign intervention
 - No charitable tax deduction will be available to donors



Questions?

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