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# charities and politics: navigating the minefield

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**practice areas**

nonprofit organizations

It can be difficult for a 501(c)(3) public charity to navigate the minefield that is political involvement. A public charity is often encouraged to advocate its mission to the general public while simultaneously forbidden to engage in partisan political activity. It is therefore critical that any public charity venturing into this minefield pay very close attention to where it treads.

Despite the potential pitfalls, many charities still choose to engage in the political arena in some aspect. These organizations often find themselves becoming active in the political world in two broad ways - political activity and lobbying. Political activity refers to a charity's involvement in the electoral process itself while lobbying refers to a charity's attempts to influence legislation through current elected officials.

## **Political Activity**

The IRS splits political activity into two categories - electioneering and nonpartisan activity. The first category, electioneering, is strictly forbidden to public charities. A charity's involvement in electioneering may result in denial or revocation of tax-exempt status and the imposition of certain excise taxes.

Electioneering is defined as participating or intervening in political campaigns for or against a candidate for public office. The candidate for public office can be any individual running for an elected office at any level, from county dogcatcher to President of the United States, regardless of an official "announcement of candidacy." Examples of proscribed activities that are considered electioneering include:

- Giving a written or oral endorsement for a candidate for office;
- Rating, ranking, or otherwise ordering candidates by preference publicly;
- Forming a Political Action Committee (PAC);



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- Coordinating activities with a campaign; and
- Raising money for campaigns, candidates, or potential candidates.

While charities are forbidden to engage in electioneering or any other form of partisan politics, they are still allowed to engage in strictly nonpartisan political activity. Nonpartisan activity consists of activities that are political in nature but that do not advocate or oppose a specific candidate, group, or campaign. Public charities are allowed to participate in nonpartisan political activity without fear of losing their tax-exempt status so long as their nonpartisan activities are not simply partisan electioneering in disguise. Activities such as voter registration or education of the public on important issues in a nonpartisan manner are examples of appropriate nonpartisan activity. However, even when engaging in these nonpartisan activities, public charities should be careful to avoid partisan mines that might lurk in nonpartisan activities. These pitfalls include:

- Using the names of particular candidates when encouraging people to vote ("Candidate A needs you to get out and vote!");
- Targeting specific groups of voters (Republicans, Democrats, etc.);
- Targeting specific geographic areas to benefit a candidate, group, or party;
- Coordinating education events with particular candidates, groups, or parties;
- Holding forums or events without inviting all viable candidates.

As these examples demonstrate, the line between electioneering and nonpartisan activity can be very fine. A charity that is unsure of whether a proposed activity may place its 501(c)(3) status at risk should seek legal advice regarding the impact of the proposed activity. Or if the proposed activity isn't integral or important enough to the public charity's mission to warrant the risk, the charity may simply want to avoid danger altogether by refraining from engaging in the potentially inappropriate activity.

Additionally, employees, staff, or other members of the public charity are not limited from participating in partisan politics in their capacity as individuals. A public charity's inability to publicly support a candidate does not preclude that charity's employees from "taking sides" as individuals.

### Lobbying

The IRS defines lobbying as "all activities intended to influence foreign, national, state or local legislation." The IRS further divides lobbying into categories - direct lobbying and grassroots lobbying. Direct lobbying consists of direct contact with legislators or government officials while grassroots lobbying aims to influence legislation by attempting to influence the public's opinion on issues.

Public charities are encouraged to be active advocates of their mission through lobbying so long as the charities do not exceed strict limitations. The IRS permits a public charity to engage in lobbying as long it is not a "substantial part" of the charity's activities. Since this "substantial part" is rather ambiguous, a charity may wish to



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take advantage of Code Section 501(h), which allows a charity to elect to be subject to a more objective measure of lobbying activity based on the amount of the organization's lobbying expenses. A public charity that makes an election under Section 501(h) may spend up to 20% of the first \$500,000 of their budget on lobbying, and reduced percentages of budget amounts above \$500,000, with an overall cap of \$1 million. In addition, only 25% of the allowable lobbying amounts may be spent on grassroots lobbying.

Just as with political activity, a charity must be careful in obeying the regulations regarding lobbying. Violating the regulations can lead to the loss of tax-exempt status, as well as an excise tax on improperly spent funds.

Feel free to contact us if you have any questions or need assistance in navigating safely through the regulations and restrictions described above.