



THE ARCHDIOCESE OF SAN FRANCISCO

LEGAL OFFICE

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MEMORANDUM

TO: All Pastors

FROM: Lawrence R. Jannuzzi, General Counsel *LJ*

DATE: August 8, 2016

RE: Political Activity and the Parishes

We are frequently asked, especially in election years, what political activity is allowed (or, more often, not allowed) for parish or other ADSF personnel, or on our property, or in connection with our events. For a complete discussion, we recommend that you read the guidelines from the United States Conference of Catholic Bishops and the California Catholic Conference, which are available on our Archdiocesan policies website. But the basic principles are not complicated and should always be borne in mind by pastors and others supervising Archdiocesan sites:

Parishes may not endorse any candidate for any political office. Nor should they engage in any lobbying, except in coordination with the Archdiocese. **The penalties for violating these rules can range from loss of tax-exempt status to stiff civil fines and penalties.**

“Endorsing” a candidate means any message that directly or indirectly promotes one candidate or party (or “dis-promotes” another) in connection with an election. Parishes may and should express opinions on **issues**, but not in such a way as to make a veiled endorsement. All events must be strictly neutral: If you have a speakers’ forum, you must invite all candidates regardless of their viewpoints (and for that reason, these are not recommended). If you have a voter-registration drive, it must not favor one party or person. Like everyone else, clergy has a constitutional right to express their opinions, but if that opinion involves an election, they must be clear that they are not speaking on behalf of the parish, the Archdiocese or the Church.

“Lobbying” means any effort to influence legislation (petitions, demonstrations, letter campaigns and the like), **whether or not it involves monetary outlay**. The laws are strict as to costs, reporting, registration, and so on. Therefore no lobbying should be done by the parishes except in coordination with the Archdiocese.

If you have any questions, please do not hesitate to contact the Archdiocesan Legal Office for further guidance.



POLITICAL ACTIVITY AND LOBBYING GUIDELINES FOR CATHOLIC ORGANIZATIONS

**The United States Conference of
Catholic Bishops**

Office of General Counsel

March 1, 2015

These guidelines do not constitute legal advice. They are provided for information purposes only. Organizations are *strongly advised* to consult with a legal advisor regarding the application of federal, state and local tax and electioneering laws to their activities.

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INTRODUCTION AND PURPOSE

The USCCB Office of General Counsel is providing these guidelines to (arch)dioceses, parishes, and other Catholic organizations (“Catholic organizations”) to assist them in distinguishing activities that are permitted during election campaigns from activities that are prohibited. The intended audience is Catholic organizations included in the USCCB group ruling that are exempt from federal income tax under section 501(a) of the Internal Revenue Code (“Code”)¹ and described in section 501(c)(3). State Catholic conferences that are included in the USCCB’s group ruling, or that are joint activities of two or more dioceses, are subject to the section 501(c)(3) rules; separately organized state Catholic conferences that are described in section 501(c)(4) are not. Therefore, the primary focus is on section 501(c)(3), which prohibits 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 seek from their own attorneys. Because interpretation of the political campaign intervention prohibition is inherently fact-specific, it frequently presents close questions that should be resolved with the advice of diocesan legal counsel. Such counsel should be sought prior to engaging in potentially problematic activities.

POLITICAL CAMPAIGN ACTIVITY AND LOBBYING

Political Campaign Activity

Background and history

The Code provides that an organization that is exempt from federal income tax under section 501(a) and described in section 501(c)(3), including a Catholic organization included in the USCCB Group Ruling, may not “participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.”

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 support provided by certain tax-exempt organizations to Dudley Dogherty, his challenger in the 1954 primary election. There is no legislative history to explain

¹ All references herein are to the Internal Revenue Code of 1986, as amended, unless otherwise indicated.

definitively why LBJ sought this amendment to the Code. However, there is no evidence that religious organizations were his targets.²

The prohibition against political campaign intervention is a condition placed on the receipt of the benefits of federal tax exemption and qualification under section 501(c)(3), including the ability to receive tax-deductible charitable contributions. Thus, an organization has a choice between engaging in political campaign intervention, for example, as a taxable entity or section 501(c)(4) social welfare organization, and the benefits of tax-exempt charitable status under section 501(c)(3). 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 the First Amendment. For example, 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 claims that the prohibition violated the free exercise clause of the First Amendment and the Religious Freedom Restoration Act.³

The prohibition in section 501(c)(3) is commonly referred to as a prohibition against "political activity" or "political campaign intervention." It applies only with respect to a "candidate for political office."

"Political campaign intervention"

The phrase "political campaign intervention" includes statements of support or opposition, in any medium, for any candidate, political party or political action committee ("PAC"); providing or soliciting financial support to or for any candidate, political party or PAC; providing or soliciting in-kind support to or for any candidate, political party or PAC; distributing voter education materials biased (i.e., "nonpartisan") with respect to any candidate, political party or PAC; conducting public forums, debates or lectures biased with respect to any candidate, political party or PAC; and conducting voter registration or get-out-the-vote drives biased with respect to any candidate, political party or PAC. The IRS interprets the political campaign intervention prohibition as absolute, meaning that a single act can cause an organization to lose its tax exemption, regardless of whether the act or acts constituted a substantial part of the organization's activities.

² See Kindell, Judith & John Reilly, *Election Year Issues*, FY 2002 IRS Exempt Organizations Technical Instruction Program at 448-451 (August 2001) (hereinafter "*Election Year Issues*"), available at www.irs.gov/pub/irs-tege/eotopici02.pdf; O'Daniel, Patrick L., *More Honored in the Breach: A Historical Perspective of the Permeable IRS Prohibition on Campaigning by Churches*, 42 B.C.L.Rev. 733 (2001); Halloran, Deirdre & Kevin Kearney, *Federal Tax Code Restrictions on Church Political Activity*, 38 Cath.Law. 105, 106-108 (1998).

³ See *Branch Ministries v. Rossotti*, 211 F.3d 137 (D.C. Cir. 2000).

“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) may be considered a candidate. In addition, *others* may propose an individual as a candidate and take steps to urge his or her election. The fact that an individual is a prominent political figure is, alone, not 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.”⁴ “Candidate” does not include a person appointed to federal, state or local public office, or the election of Presidential or Vice-Presidential electors, whether or not such individual or electors are selected, nominated, elected, or appointed.⁵ See [Appointed Public Officials](#), below.

“Public office”

Neither the Code nor the regulations defines 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.⁶

Section 501(c)(3) does not restrict intervention 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 such 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 527.⁷ See [Section 527 political organizations, segregated funds and the 527\(f\) tax](#), below

⁴ See Treas. Reg. § 1.501(c)(3)-1(c)(3)(iii); *Election Year Issues* at 339; 342-4; TAM 9130008 (April 16, 1991).

⁵ Cf. Section 527(e)(2) and Treas. Reg. § 53.4946-1(g)(2)(i).

⁶ See *Election Year Issues* at 339-41; G.C.M. 39811 (June 30, 1989).

⁷ See G.C.M. 39694 (January 21, 1988).

Investigations of political campaign intervention

The IRS is usually made aware of interventions in political campaigns through media reports and third-party complaints.⁸ The IRS does not target churches and religious organizations for enforcement of the political campaign intervention. Referred complaints are frequently first reviewed by the IRS' Review of Operations unit, the "ROO." However, the IRS employs a "dual track" program for complaints regarding political campaign intervention: such complaints are also reviewed by the IRS' Political Activities Referral Committee, or "PARC." The PARC consists entirely of career civil service managers, who decide whether a complaint merits further compliance review.⁹

Individuals, watchdog groups and other organizations can file complaints with the IRS alleging that an organization has violated the prohibition against political campaign intervention by completing Form 13909, Tax-Exempt Organization Complaint (Referral) Form,¹⁰ along with supporting documentation, and mailing, faxing or emailing the information to:

IRS EO Classification Fax: (214) 413-5415
Mail Code 4910DAL Email: eoclass@irs.gov.
1100 Commerce St.
Dallas, TX 75242-1198

If a complaint with respect to a possible violation of the prohibition against political campaign intervention involves a church, the IRS must follow special procedures before commencing an inquiry. The IRS may initiate such an inquiry only if a high level IRS official 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. In 2009, responding to litigation that questioned the current IRS delegation of authority for initiating church tax inquiries, the IRS issued proposed regulations that named the Director, Exempt Organizations, as the official authorized to initiate church tax inquiries. Although hearings on the proposed regulations were held early in 2010, they have not been finalized.¹¹

⁸ See [Form 13909, Tax-Exempt Organization Complaint \(Referral\) Form](#); [IRS Complaint Process For Tax Exempt Organizations](#).

⁹ See Letter from IRS Commissioner Koskinen to Rep. Scott Garrett (R-NJ), dated September 5, 2014.

¹⁰ The form is available online at <http://www.irs.gov/pub/irs-pdf/f13909.pdf>.

¹¹ See Section 7611; Publication 1828, *Tax Guide for Churches and Religious Organizations*, at 26 (Rev. November 2013) (hereinafter "Pub. 1828"), <http://www.irs.gov/pub/irs-pdf/p1828.pdf>.

Enforcement of the political campaign intervention prohibition

The political campaign activity prohibition of section 501(c)(3) has been interpreted as absolute. Accordingly, any violation of the prohibition may result in revocation of tax-exempt status, including an organization's ability to receive contributions from donors eligible for the charitable income tax deduction. Further, excise tax penalties may be imposed *in addition to* revocation of exemption. As a general rule, however, the 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.¹²

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 2 and ½% 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, the IRS may seek immediate determination and assessment of income and excise taxes due on account of *flagrant* political expenditures. The IRS also may bring action in United States District Court seeking an injunction barring further political expenditures. The IRS must first notify the organization of its intention to seek an injunction unless the organization immediately ceases making political expenditures, and 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.¹³

Federal Election Campaign Act

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.¹⁴ FECA applies to "corporations," for-profit and nonprofit, but is generally limited in application to campaigns for federal office. As a practical matter, because section 501(c)(3) contains an absolute prohibition against political campaign intervention, FECA has not been an

¹² See *Election Year Issues* at 354.

¹³ See Sections 4955, 685, 7409(a)(1), and 7409(a)(2); *Election Year Issues* at 353-63.

¹⁴ 52 U.S.C. § 30101 *et seq.*

issue for Catholic organizations. Activities potentially subject to regulation under FECA are generally prohibited to Catholic organizations under section 501(c)(3). The IRS had consistently taken the position 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.¹⁵ In recent proposed guidance, however, the IRS has expressed an interest in harmonizing certain political activity concepts and definitions among section 501(c) organizations and section 527 political organizations with FECA rules.¹⁶ The Supreme Court’s decision in *Citizens United v. FEC*,¹⁷ which held that the FECA/BCRA prohibitions against independent expenditures and electioneering communications by corporations and unions violated their free speech rights under the First Amendment had no direct effect on Catholic organizations, since as section 501(c)(3) organizations, they remain subject to the absolute prohibition against political campaign intervention.

FECA is enforced by the Federal Election Commission (“FEC”), and individuals, watchdog groups and other organizations can file complaints with the FEC alleging that an organization has violated FECA.¹⁸

Candidate-Related Political Activity

The term “candidate-related political activity” refers to activity which, for purposes of social welfare organizations described in section 501(c)(4), does not promote social welfare. The term was introduced in a Notice of Proposed Rulemaking published in November 2013,¹⁹ and was not intended to immediately replace the definition of prohibited “political campaign intervention” for purposes of section 501(c)(3) Catholic organizations. No final regulation was promulgated, and Treasury and the IRS announced their intent to re-propose the regulations after taking into account comments submitted with respect to the November 2013 NPRM. IRS Commissioner John Koskinen announced that the IRS will issue new rules in “early 2015.” It remains to be seen whether the re-proposed rules will apply directly to section 501(c)(3) organizations.

Section 527 political organizations, segregated funds and the 527(f) tax

Section 527 imposes a tax at the highest corporate rate on the gross income (excluding exempt function income) of section 527 political organizations.²⁰ A “political organization” for purposes of section 527 is a party, committee, association, fund, or other organization (whether incorporated or not) that is organized and operated primarily for the purpose of directly or

¹⁵ See *Election Year Issues* at 346-7.

¹⁶ See the discussion under [Candidate-Related Political Activity](#), below.

¹⁷ 558 U.S. 310 (2010).

¹⁸ 52 U.S.C. § 30109.

¹⁹ 78 Fed. Reg. 71535. A copy of the comments submitted by the USCCB Office of General Counsel can be found at <http://www.usccb.org/about/general-counsel/rulemaking/index.cfm>.

²⁰ Section 527(b) (subject to modifications under section 527(c)(2)).

indirectly accepting contributions and/or making expenditures for an “exempt function.”²¹ An “exempt function” is defined as “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.”²² Thus, even though the legislative history of section 527 has been interpreted as not applicable to section 501(c)(3) organizations,²³ because the definition of “exempt function” encompasses more activity (i.e., attempting to influence an *appointment*, not just an *election*, to public office) than is normally considered political campaign intervention for purposes of section 501(c)(3), section 527 may have limited applicability to section 501(c)(3) organizations.

Section 527 permits an organization (e.g., an organization described in section 501(c)(4), 501(c)(5) or 501(c)(6)) to establish a separate segregated fund in order to avoid the imposition of the section 527 tax. The separate segregated fund may be a mere bank account. Conceivably, 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 Treas. Reg. § 1.527-2(b), it will be treated as a political organization subject to the provisions of section 527. A section 501(c)(3) organization cannot create a separate segregated fund in order to engage in political campaign intervention. A state Catholic conference described in section 501(c)(4) may create either a section 527 political organization or a separate segregated fund. Section 527 political organizations and separate segregated funds are subject to notice, reporting and donor disclosure requirements that are beyond the scope of these Guidelines.

Section 527 also imposes a tax, referred to as the 527(f) tax, on organizations exempt under section 501(c)—including 501(c)(3), 501(c)(4) and other organizations—that expend any funds for an exempt function. The tax is assessed on the lesser of the organization’s net investment income or the aggregate expenditures for exempt functions. Thus, a section 501(c)(3) organization that expends funds on a permissible exempt function (i.e., the expenditure does not constitute political campaign intervention) is theoretically liable for the 527(f) tax.²⁴ It is widely believed that the IRS does not assess a 527(f) tax, however, because the regulations provide that while “exempt function” generally has the same meaning as it does for section 527 organizations, generally,²⁵ the definition is qualified in such a way that effectively no expenditure is subject to tax—“indirect [exempt function] expenses” are taxed only to the extent provided in a section that was reserved for future clarification, which has not yet occurred,²⁶ and other exempt function expenditures that are allowable under FECA are not subject to tax except as provided in a section that also was reserved for future clarification.²⁷

²¹ Section 527(e)(1).

²² Section 527(e)(2).

²³ See S.Rep. No. 93-1357, 1975-1 C.B. 517, 534.

²⁴ See G.C.M. 39694 (January 21, 1988).

²⁵ I.e., Treas. Reg. § 1.527-2(c).

²⁶ See Treas. Reg. § 1.527-6(b)(1)(i), -6(b)(2).

²⁷ See Treas. Reg. § 1.527-6(b)(1)(i), -6(b)(3).

Post-*Citizens United*, certain expenditures that could be exempt function expenditures are still not permitted under FECA (e.g., in-kind contributions to a candidate, political party or PAC, or expenditures for certain activities coordinated with a candidate or campaign) and could trigger a 527(f) tax. Section 501(c)(3) Catholic organizations are not permitted to make these kinds of expenditures, however.

Lobbying

Limited, but not prohibited

Section 501(c)(3) organizations are not prohibited from engaging in lobbying activities, but they are limited in the amount of lobbying activities they may conduct in relation to their overall activities.²⁸ The statutory limitation on lobbying actually predates the political campaign activity prohibition.²⁹ Under section 501(c)(3), Catholic organizations may engage in lobbying activities if they do not constitute a substantial part of their total activities, measured by time, effort, expenditures and other relevant factors. Neither the Code nor the regulations define “substantial” in this context. Case law suggests that lobbying is not substantial as long as the lobbying activities constitute no more than between 5% and 15% of an organization’s total activities.³⁰

“Lobbying”

The lobbying limitation, like the political campaign activity prohibition, can be found in the language of section 501(c)(3), which states that “no substantial part of the activities of [the organization] is carrying on propaganda, or otherwise attempting, to influence legislation....” Thus, the lobbying limitation focuses on legislation, whereas the political campaign intervention prohibition 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. The lobbying limitation applies regardless of whether the lobbying is germane to an organization's tax-exempt purpose or even beneficial to the community.³¹

²⁸ Treas. Reg. § 1.501(c)(3)-1(c)(3)(ii).

²⁹ Congress limited lobbying activity by section 501(c)(3) organizations in 1934, twenty years before it prohibited political campaign intervention.

³⁰ See *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). Cf. *Christian Echoes National Ministry*, 470 F.2d 849 (10th Cir. 1972) (eschewing a percentage test in favor of considering the totality of the facts and circumstances).

³¹ Rev. Rul. 67-293, 1967-2 C.B. 185.

“Legislation”

Legislation means any action by (a) Congress, (b) a state legislature or a local council or similar governing body, or (c) the public in a referendum, initiative, constitutional amendment or similar procedure.³² Consequently, attempts to influence the judiciary (e.g., by filing an amicus brief) or executive branch (e.g., by urging the adoption or revision of regulations or other administrative guidance) do not constitute lobbying.

Section 501(h) expenditure test election

In 1976, Congress enacted section 501(h), which is an elective provision that established a sliding scale of permissible lobbying expenditures based on an exempt organization's total budget.³³ 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).³⁴ 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 “no substantial part” test, i.e., only an insubstantial amount of their activities can be devoted to lobbying. Organizations that are eligible to make the 501(h) election, but choose not to and be subject to the “no substantial part” test, are sometimes referred to as “non-electing charities.” Large charities,³⁵ and charities that want to conduct more grassroots lobbying than direct lobbying, often prefer to operate under the “no substantial part” test.

“No substantial part” test

Unlike the 501(h) expenditure test, the “no substantial part” test considers the amount of lobbying activity conducted by an organization in terms of time, effort and other factors, *in addition to* considering expenditures. Thus, lobbying activities conducted by an organization's volunteers count under this test, even if they are not reimbursed for their expenses. An organization measures its lobbying activities under the “no substantial part” test by adding together the amounts of its expenditures attempting to influence foreign, national, state or local legislation, including attempts to influence public opinion on a legislative matter or referendum, through all of the following: media advertisements; mailings to members, legislators or the public; publications, or published or broadcast statements; grants to other organizations for lobbying purposes; direct contact with legislators, their staffs, government officials or a legislative body; rallies, demonstrations, seminars, conventions, speeches, lectures, or any similar means; and all other activities. For this purpose, compensation paid to staff, officers or consultants with respect to these activities should be included. In addition, the

³² Treas. Reg. § 1.501(c)(3)-1(c)(3)(iii).

³³ Total lobbying expenditures cannot exceed \$1,000,000, and grassroots expenditures are limited to a quarter of the organization's total lobbying expenditure limit. See § 4911(c).

³⁴ See § 501(h)(5)

³⁵ The expenditure limits were established by Congress when the statute was enacted, and they are not subject to inflation-adjustments, thus rendering them more restrictive as time passes.

organization should also consider the scope and extent of activities conducted by its volunteers.³⁶

Lobbying Disclosure Act

The Lobbying Disclosure Act of 1995 (“LDA”) imposes registration and reporting requirements and limitations on lobbying by for profit and nonprofit organizations.³⁷ Tax-exempt organizations that engage in lobbying activities through their own employed “in-house” lobbyists are required to file a single registration.³⁸ For purposes of the LDA, “lobbying activities” includes lobbying contacts, and efforts in support of such contacts, that are oral or written communications with covered executive branch and legislative branch officials and their staffs. Thus, attempts to influence state or local legislation or ballot initiatives are not lobbying activities under the LDA. An organization must register (Form LD-1) when a compensated in-house lobbyist makes more than one lobbying contact and spends 20% or more of his or her time engaged in lobbying activities over a three-month period, and the organization’s quarterly expenditures exceed a threshold amount, which is adjusted for inflation.³⁹

Active registrants must e-file quarterly reports (Form LD-2) no later than twenty days⁴⁰ after the first day of each new quarter, covering the prior quarterly period. Thus, reports are due April 20 (covering January 1 – March 31), July 20 (covering April 1 – June 30), October 20 (covering July 1 – September 30), and January 20 (covering October 1 – December 31). There is also a semi-annual requirement to e-file contribution reports (Form LD-203) no later than thirty days⁴¹ after the first day of each new period, i.e., July 30 (covering the preceding period January 1 through June 30) and January 30 (covering the preceding period July 1 through December 31).

A “lobbying contact” does not include a communication made by a church, its integrated auxiliary, a convention or association of churches described in section 6033(a)(3)(A)(i), or a religious order described in section 6033(a)(3)(A)(iii).⁴² Thus, (arch)dioceses and certain other organizations included in the USCCB group ruling are generally exempt from the LDA’s

³⁶ See Form 990/990-EZ Schedule C, Political Campaign and Lobbying Activities, Part II-B.

³⁷ P.L. 104–65 (Dec. 19, 1995). 2 U.S.C. § 1601 *et seq.*

³⁸ 2 U.S.C. § 1603(a)(2). Organizations must obtain a Senate password and register online. See <http://senate.gov/lobby>.

³⁹ After January 1, 2013, an organization employing in-house lobbyists is exempt from registration if its total expenses for lobbying activities does not exceed and is not expected to exceed \$12,500 during a quarterly period. This amount is subject to change.

⁴⁰ Or the first business day after the 20th day. 2 U.S.C. § 1604(a).

⁴¹ Or the first business day after the 30th day. 2 U.S.C. § 1604(d)(1).

⁴² 2 U.S.C. § 1602(8)(B)(xviii). *Note:* the references to section 6033(a)(2) were made prior to the Tax Increase Prevention and Reconciliation Act of 2005 (P.L. 109-222), which re-designated those sections under section 6033(a)(3). For more information about the filing exemptions for religious organizations under section 6033, see *Annual Filing Requirements for Catholic Organizations* available at www.usccb.org/about/general-counsel/.

registration and reporting requirements, as are state Catholic conferences operated as joint activities of two or more (arch)dioceses. However, separately organized state Catholic conferences that are described in section 501(c)(4) would be subject to the LDA if they engage in lobbying activities, and would also be ineligible to receive federal awards or grants.⁴³ Lobbying firms or self-employed lobbyists who conduct lobbying activity on behalf of churches, integrated auxiliaries, conventions or associations of churches or religious orders are required to register.⁴⁴ Failure to remedy defective filings or otherwise comply with the provisions of the LDA can result in civil fines of not more than \$200,000 and criminal fines and/or imprisonment for not more than five years.⁴⁵

SPECIFIC SITUATIONS

Situations concerning application of the section 501(c)(3) political activity prohibition and lobbying limitation commonly encountered by Catholic organizations are set forth below, in alphabetical order.

Appearances at Church Events

The 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 his or her capacity as a candidate or in his or her individual capacity. Since candidates may not be familiar with the inviting organization's tax-exempt status or the prohibition against political campaign intervention under section 501(c)(3), the inviting organization should clarify the capacity in which a candidate is being invited to speak and inform the candidate of any limitations on his or her presentation.

If an individual is invited in a candidate capacity, the rules applicable to public forums apply (see [Public Forums, Debates, Candidate Nights](#), below), and equal access must be provided to other candidates for the same office. The 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. Also, the IRS has 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.

⁴³ 2 U.S.C. § 1611.

⁴⁴ See *Lobbying Disclosure Act Guidance*, Effective January 1, 2008, available at www.senate.gov/LDA.

⁴⁵ 2 U.S.C. § 1606.

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 as an 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 1. 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.⁴⁶

Example 2. Church P, a section 501(c)(3) organization, 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, attends 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.⁴⁷

In addition, the 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.⁴⁸

Finally, a candidate's attendance at an event sponsored by an exempt organization that is open to the public, such as a concert, lecture, or church picnic, does not by itself constitute

⁴⁶ See Example 2, Pub. 1828 at 12; Situation 11, Rev. Rul. 2007-41.

⁴⁷ See Example 1, Pub. 1828 at 12; Situation 10, Rev. Rul. 2007-41.

⁴⁸ See Pub. 1828 at 9-12; *Election Year Issues* at 380-2.

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 sponsoring organization does not publicly recognize the candidate for public office, and that a nonpartisan atmosphere is maintained.

Example 3. Mayor G attends a concert performed by a choir of Church 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, S’s minister 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, Church S has engaged in political campaign intervention.⁴⁹

In November 2013, Treasury and the IRS proposed a rule in which a person’s appearance at an organization’s event within 30 days of a primary election or 60 days of a general election in which the person is a candidate would constitute candidate-related political activity (see [Candidate-Related Political Activity](#), above) by the organization. That proposed rule was not promulgated as a final regulation and does not impact section 501(c)(3) Catholic organizations.

Appointed Public Officials

For purposes of the 501(c)(3) political campaign intervention prohibition, a person being confirmed for an appointed public office, such as an executive or judicial branch official, is not a “candidate,” and attempts to influence the results of that confirmation is not political campaign intervention, but rather constitutes “lobbying” by the organization.

Example. Judge B has been nominated to serve as a federal district court judge in District X, which is located in State D. Church T, located in District X, opposes Judge B’s nomination, and communicates through its weekly newsletter and in the pulpit that the citizens of State D should contact the two State D senators and urge them to vote against Judge B’s nomination. Church T has not engaged in political campaign intervention, although its attempts to influence the confirmation of Judge B constitute lobbying.⁵⁰ Church T may be liable for tax on exempt function expenditures unless it maintained a separate segregated fund to conduct section 527 exempt functions that do not constitute political campaign intervention.⁵¹

⁴⁹ See Example 4, Pub. 1828 at 12; Situation 13, Rev. Rul. 2007-41.

⁵⁰ Notice 88-76, 1988-2 C.B. 392 (July 5, 1988).

⁵¹ See G.C.M. 39694 (Jan. 22, 1988); sections 527(e)(2) and (f).

In November 2013, Treasury and the IRS proposed a rule in which the definition of “candidate” was expanded to mean “an individual who publicly offers himself, or is proposed by another, for...nomination...or appointment to any federal, state, or local public office....” See [Candidate-Related Political Activity](#), above. That proposed rule was not promulgated as a final regulation and does not impact section 501(c)(3) Catholic organizations.

FECA also does not apply to appointments because the appointment of a public official to office is not an “election,” and the appointee is not a “candidate.”⁵²

Attribution of Individuals (e.g., Employees and Volunteers) to Organizations

Section 501(c)(3) applies to tax-exempt organizations, not individuals. Accordingly, the political campaign intervention prohibition applies to Catholic organizations, not to their leaders, employees, members or volunteers *acting in their individual capacities*. The 1991 IRS-approved press release announcing the settlement with Jimmy Swaggart Ministries over political campaign intervention during the 1986 presidential campaign stated that if an endorsement or statement of opposition occurs during an official organization function or in an organization’s official publication, the endorsement will be attributed to the organization. Thus, the political campaign intervention prohibition does not prevent officials of Catholic organizations, acting in their individual capacities, from becoming involved in political intervention, *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.”⁵³ For this purpose, an organization’s resources and facilities includes but is not limited to use of copy machines, paper, envelopes, email, letterhead, mailing lists and paid working time, i.e., employees should be required to take leave to participate in political activities. Catholic organizations should address these issues in their personnel manuals.

Organizations do act through individuals, of course. Thus, when officials of a Catholic organization engage in political campaign intervention at their organization’s official functions, e.g., worship services and other official events, or through the organization’s official publications, e.g., parish bulletin or (arch)diocesan newspaper, the political campaign intervention will be attributed to the Catholic organization.⁵⁴

Example 1. Minister B is the minister of Church K 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 B does not say he is speaking on behalf of his church. His

⁵² See 52 U.S.C. §§ 30101(1), (2); 11 C.F.R. 100.2(a).

⁵³ See *Public Statement of Jimmy Swaggart*, President, Jimmy Swaggart Ministries (December 7, 1991); *Election Year Issues* at 363-4.

⁵⁴ See Rev. Rul. 2007-41; *Election Year Issues* at 364.

endorsement is reported on the front page of the local newspaper and he is identified in the article as the minister of Church K. Since Minister B 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 K, his actions did not constitute campaign intervention attributable to Church K.⁵⁵

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.⁵⁶

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.⁵⁷

Officials of a Catholic organization, *acting in their individual capacities*, may identify themselves as officials of their 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. The following disclaimer may be used for this purpose: "Organizational affiliation shown for identification purposes only; no endorsement by the organization implied." However, the IRS has indicated that this sort of

⁵⁵ See Example 2, Pub. 1828, at 7; Situation 5, Rev. Rul. 2007-41.

⁵⁶ See Situation 3, Rev. Rul. 2007-41.

⁵⁷ See Example 4, Pub. 1828 at 8.

disclaimer is *not effective* to avoid attribution if the endorsement occurs in the organization's official publication or at its official function.⁵⁸

Example 4. Minister C is the minister of Church I. Church I publishes a monthly church newsletter that is distributed to all church members. In each issue, Minister C has a column titled "My Views." The month before the election, Minister C states in the "My Views" column, "It is my personal opinion that Candidate U should be reelected." For that one issue, Minister C 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 I, it constitutes campaign intervention attributed to Church I.⁵⁹

The actions of an organization's employees (other than organization officials) and members may also be attributed to the organization where there is real or apparent authorization of their actions by the organization. The 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.⁶⁰

Ballot Measures

Ballot measures, including referenda, initiatives, constitutional amendments, and bond measures, are considered legislative proposals (see [Lobbying](#), above). 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 their tax-exempt status. For Catholic organizations that have made the section 501(h) election, communications regarding ballot initiatives and similar procedures are considered "direct lobbying" rather than "grassroots lobbying."⁶¹

Bumper Stickers

Placement of political bumper stickers is essentially an attribution issue. Political bumper stickers should not be placed on vehicles owned or leased by Catholic organizations. Section

⁵⁸ See *Election Year Issues* at 364.

⁵⁹ See Example 3, Pub. 1828 at 8; Situation 4, Rev. Rul. 2007-41.

⁶⁰ See *Election Year Issues* at 364-5; G.C.M. 39414 (February 29, 1984).

⁶¹ Treas. Reg. § 56.4911-2(b)(1)(iii).

501(c)(3) does not prohibit the placement of political bumper stickers on the personally-owned or leased 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.⁶² Further, expenditures made to distribute such materials prepared by a candidate or candidate's committee may be considered contributions to a candidate under FECA.⁶³

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.

Contributions to Other Section 501(c)(3) Public Charities

A Catholic organization that makes a general support grant or contribution to another public charity (i.e., an organization described in section 501(c)(3) and section 509(a)(1), 509(a)(2), or 509(a)(3)) does not need to treat the grant as an expenditure for lobbying, as long as the grant is not earmarked for influencing legislation.

A Catholic organization that makes a grant or contribution to another public charity that is earmarked for use in lobbying activity must treat the grant as an expenditure for lobbying.

If a Catholic organization makes a grant or contribution to another public charity for a specific project, but the grant or contribution is not earmarked for use in lobbying activity, then the grantor Catholic organization need not treat the grant or contribution as an expenditure for lobbying if the amount, combined with all other grants and/or contributions for that project during the year, does not exceed the non-lobbying portion of the budget of the recipient organization's funded project. If the sum of all project grants or contributions exceeds the non-lobbying portion of the recipient organization's project budget, then the grantor Catholic organization should treat as a lobbying expenditure the amount by which its grant and/or contributions exceed the non-lobbying amount of the budget.⁶⁴

Contributions to Section 501(c)(4) Organizations

If a section 501(c)(3) Catholic organization makes a grant or contribution to a section 501(c)(4) organization, including a state Catholic conference, the grant or contribution should generally

⁶² See *Election Year Issues* at 372.

⁶³ See 11 C.F.R. § 109.23.

⁶⁴ See PLR 200943042.

be treated by the 501(c)(3) organization as an expenditure for lobbying activity, unless a written agreement requires that the funds be used for a charitable non-lobbying purpose, and if they are not so used, returned to the 501(c)(3) organization. This principle also applies to a contribution to a state Catholic conference that is operated as an activity of one or more dioceses. In the case of a contribution to a 501(c)(4) organization, including a state Catholic conference described in 501(c)(4), it is recommended that a written agreement expressly provide that no part of the grant or contribution may be used to participate or intervene in any way in a campaign for or against any candidate for public office. A state Catholic conference which is funded entirely by contributions from dioceses, whether it is operated as an activity of one or more dioceses or separately organized under state law and described in 501(c)(4), should not engage in political campaign intervention.

An individual's contribution to a diocese or other Catholic organization intended to be used by the recipient for lobbying activity, or earmarked for further distribution to a 501(c)(4) organization or state Catholic conference to be used for lobbying, is not deductible under section 170 as a charitable contribution. (See [Earmarked Contributions](#), below).⁶⁵ In addition, 501(c)(4) organizations with annual gross receipts of normally more than \$100,000 are required to notify donors in their fundraising solicitations that contributions or gifts are not deductible as charitable contributions.⁶⁶ The Code imposes additional notification requirements regarding the nondeductibility of dues or other similar payments to non-section 501(c)(3) organizations unless the payments are generally not deductible as business expenses.⁶⁷

De Minimis Activity

The IRS interprets the political campaign activity prohibition as absolute. There is no exception for *de minimis* activity. However, the enactment of the section 4955 excise tax provisions (see [Enforcement of the political campaign intervention prohibition](#), above) may permit relief in certain circumstances.⁶⁸

Earmarked Contributions

Catholic organizations may lobby and attempt to influence legislation at the federal, state and local levels without jeopardizing their tax-exempt status, as long as those activities are not a substantial part of the organization's total activities (see [Lobbying](#), above). However, contributions to Catholic organizations that are earmarked for lobbying purposes are not deductible for charitable income tax purposes under section 170.

⁶⁵ See Rev. Rul. 80-275, 1980-2 C.B. 69.

⁶⁶ Section 6113.

⁶⁷ Section 6033(e)(3).

⁶⁸ See *Election Year Issues* at 352-3.

Example. Organization X, a 501(c)(3) organization, is concerned about proposed legislation in its State, and seeks to raise funds to enable it to influence whether the proposed legislation may become the law of State. Organization X solicits contributions from its members specifically for this purpose. Organization X may not issue tax deduction receipts to donors for contributions for this purpose, and donors are not permitted a charitable income tax deduction for their contributions earmarked for use in, or connection with, attempting to influence legislation.⁶⁹

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).⁷⁰

Tip. In order to ensure that an organization's education of candidates is conducted in a nonpartisan manner, it is recommended that the organization send its educational materials to all candidates in the election.

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 prohibition against political campaign intervention (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.⁷¹

⁶⁹ See Rev. Rul. 80-275.

⁷⁰ See Rev. Rul. 76-456, 1976-2 C.B. 151.

⁷¹ 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.⁷²

Foreign Elective Offices

For purposes of the absolute prohibition against political campaign intervention, Catholic organizations should not support or oppose candidates for foreign elective office.⁷³

Foreign Laws

For purposes of the lobbying limitation on attempts to influence legislation, the term “legislation” includes foreign laws as well as domestic laws. A Catholic organization that attempts to influence and/or advocate changes in the laws of a foreign country should count such activities toward its lobbying limitation (see [Lobbying](#), above).⁷⁴

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.

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.⁷⁵

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.

Issue Advocacy

⁷² See TAM 9812001 (August 21, 1996–issued March 20, 1998).

⁷³ See PLR 201214035 (although private benefit issues alone could have resulted in this organization’s denial of exemption, the IRS treated the organization’s participation in foreign elections as political campaign intervention).

⁷⁴ Rev. Rul. 73-440, 1973-2 CB 177.

⁷⁵ See TAM 9812001.

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, the IRS acknowledges that an issue advocacy communication may constitute intervention in a political campaign through the use of code words, such as “conservative,” “liberal,” “pro-life,” “pro-choice,” “anti-choice,” “Republican,” or “Democrat,” coupled with a discussion of a candidacy or election, even if no candidate is specifically named. The 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.”⁷⁶

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. The 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’s agenda. This risk is increased significantly with respect to narrow-issue advocacy communications that mention candidates by name or through the use of “code words.” The 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.⁷⁷

Although issue advocacy communications must be evaluated in context, the 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. The 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.” The IRS has also indicated that a communication can identify a candidate not only by stating the candidate’s name, but also by other means, such as showing the candidate’s

⁷⁶ See *Election Year Issues* at 344-346; TAM 199907021 (May 20, 1998); TAM 9117001 (September 5, 1990).

⁷⁷ See Rev. Rul. 78-248, 1978-1 C.B. 154, Situation 4; GCM 34233 (December 3, 1969); *Election Year Issues* at 375-6.

picture, or by referring to political party affiliations or other distinctive features of a candidate's platform or biography.⁷⁸

Example 1. 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.⁷⁹

When issue advocacy constitutes political campaign intervention

The 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.⁸⁰

⁷⁸ Rev. Rul. 2007-41.

⁷⁹ Situation 16, Rev. Rul. 2007-41.

⁸⁰ See Rev. Rul. 2007-41.

Factors tending to show that an advocacy communication on a public policy issue does *not* constitute political 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, which 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.⁸¹

Example 2. Church 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 is the incumbent candidate in a party primary. The advertisement states that a pending bill in the United States Senate, would provide additional opportunities for State V residents to participate in faith-based programs by providing funding to such church-affiliated programs. The advertisement ends with the statement “Call or write Senator C to tell him to vote for this bill, despite his opposition in the past.” Funding for faith-based programs has not been raised as an issue distinguishing Senator C from any opponent. The bill is scheduled for a vote before the election. The advertisement identifies Senator C’s position as contrary to O’s position. Church O has not violated the political campaign intervention prohibition: The advertisement does not mention the election or the candidacy of Senator C or distinguish Senator C from any opponent. The timing of the advertising and the identification of Senator C are directly related to the specifically identified legislation. The candidate identified, Senator C, is an officeholder who is in a position to vote on the legislation.⁸²

Example 3. Church R, a section 501(c)(3) organization, prepares and finances a radio advertisement urging an increase in state funding for faith-based 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 Church R on the same

⁸¹ See Rev. Rul. 2004-6, 2004-4 I.R.B. 328 (January 26, 2004).

⁸² See Example 1, Pub. 1828 at 9; Situation 14, Rev. Rul. 2007-41.

issue. The advertisement cites numerous statistics indicating that faith-based education in State X is under-funded. Although the advertisement does not say anything about Governor E's position on funding for faith-based education, it ends with "Tell Governor E what you think about our under-funded schools." In public appearances and campaign literature, Governor E's opponent has made funding of faith-based education an issue in the campaign by focusing on Governor E's veto of an income tax increase the previous year to increase funding for faith-based 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 faith-based education. Church R has violated the political campaign prohibition: 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 Church 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.⁸³

When issue advocacy is subject to disclosure requirements under FECA

A Catholic organization may engage in issue advocacy that is considered lobbying, but which still constitutes an "electioneering communication" under FECA and be subject to FECA's disclosure requirements. An "electioneering communication" is defined to mean a broadcast, cable or satellite communication that refers to a clearly identified candidate for federal office within 60 days of a general election (or 30 days of a primary election).⁸⁴ An organization that makes electioneering communications in excess of \$10,000 during a calendar year is required to report to the FEC the names and addresses of contributors who contributed \$1,000 or more during the year through the disclosure date.⁸⁵

Example. Organization T, a section 501(c)(3) charity, has as its mission "to empower individuals and to educate citizens, legislators and opinion makers about public policies that enhance personal and economic freedom." Organization T produces a radio advertisement which asks listeners to contact State N senators, Senator Y and Senator Z, and urges them to support certain legislation. Organization T runs the advertisement within 60 days of a general federal election in which Senator Y, an incumbent, is a candidate. Organization T's radio ad constitutes an "electioneering communication."⁸⁶

⁸³ See Example 2, Pub. 1828 at 9; Situation 15, Rev. Rul. 207-41.

⁸⁴ 52 U.S.C. § 30104(f)(3).

⁸⁵ 52 U.S.C. § 30104(f)(1).

⁸⁶ See *Independence Institute v. Federal Election Commission*, 14-1500-CKK, 2014 WL 4959403 (D.D.C., Oct. 6, 2014).

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. The 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 ensure that the list is equally available to all candidates, the 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.⁸⁷

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.⁸⁸

Example. 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.⁸⁹

⁸⁷ See *Election Year Issues* at 383-4.

⁸⁸ See Rev. Rul. 2007-41.

⁸⁹ Situation 18, Rev. Rul. 2007-41.

Member Communications

For purposes of the section 501(c)(3) prohibition against political campaign intervention, there is no exception for member communications, such as communications (even through a secured website) to affiliated organizations. There is a member exception for 501(c)(3) organizations that have made the 501(h) expenditure election for lobbying.⁹⁰

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 various activities may result in political campaign intervention. For example, a parish might distribute a nonbiased voter guide on the same Sunday that 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, however, the surrounding facts-and-circumstances of both activities suggest political campaign intervention.⁹¹

PACs (Political Action Committees)

A section 501(c)(3) 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.⁹²

The 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 Code. 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. The 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.⁹³

⁹⁰ Section 4911(d)(2)(B).

⁹¹ See Rev. Rul. 2007-41.

⁹² See Treas. Reg. § 1.527-6(g); *Election Year Issues* at 365-6; Rev. Rul. 81-95, 1981 C.B. 332.

⁹³ See FEC Advisory Opinion 1984-12 (May 31, 1984); *Election Year Issues* at 366.

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 campaign materials or biased voter education materials in the lot. Parking lots are distinguishable from public streets and the sidewalks adjacent to Catholic facilities. These spaces generally are classified as public property over which the Catholic organization lacks control over access.⁹⁴

Photo Ops

It is not unusual, during election campaigns, for a candidate or campaign organization to contact a Catholic organization requesting some accommodation, such as 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, or other form of access to Catholic populations. It is difficult to generalize regarding the appropriateness of such requests from a section 501(c)(3) perspective. In addition, (arch)dioceses may have local policies regulating candidate access. A Catholic organization receiving an accommodation request should immediately inform the candidate or campaign organization 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 then be consulted to evaluate the applicability of the political campaign intervention prohibition.

Polling Places

Catholic organizations, particularly schools, often 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. Limited campaign

⁹⁴ 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).

leafleting or signage conducted by local campaign volunteers outside the polling place as permitted under local election rules 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. The IRS has identified the following factors as important to a favorable determination regarding candidate forum activity: (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.⁹⁵

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.⁹⁶

The 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.⁹⁷

⁹⁵ 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.

⁹⁶ 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); 11 C.F.R. § 110.13(b).

⁹⁷ See *Election Year Issues* at 374; TAM 9635003 (April 19, 1996) (organization that limited forum participation to four candidates from two parties who had at least a 15% share of

Example 1. 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.⁹⁸

Example 2. The facts are the same as the preceding example, 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.⁹⁹

If all candidates appear at the public forum to speak, the candidates may distribute their campaign literature. If all candidates do not appear, however, no distribution of campaign literature should be permitted. Designated candidate surrogates generally may substitute for candidates.¹⁰⁰

In November 2013, Treasury and the IRS proposed a rule in which a person's appearance at an organization's event, including public forums, debates, candidate nights and similar activities, within 30 days of a primary election or 60 days of a general election in which the person is a candidate would constitute candidate-related political activity (see [Candidate-Related Political Activity](#), above) by the organization. That proposed rule was not promulgated as a final regulation and does not impact section 501(c)(3) Catholic organizations.

Publications

Many Catholic organizations publish periodicals containing information of interest to readers and discussion of issues deemed important to the publishing organization.

popular support as reflected in a recognized independent and credible state poll did not violation political activity prohibition).

⁹⁸ Situation 7, Rev. Rul. 2007-41.

⁹⁹ Situation 8, Rev. Rul. 2007-41.

¹⁰⁰ See *Election Year Issues* at 375.

Editorials, Columns, Opinions

Editorials represent the official position of, and are attributable to, the Catholic organization publishing the periodical. The statements of columnists appearing in a Catholic periodical are likewise generally 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 nonetheless will be attributed to the Catholic organization, particularly when 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.

Letters to Editor

Many Catholic periodicals publish letters to the editor. The 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 periodical'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 those of the periodical or its sponsoring organization.

News Stories

During election periods, coverage may include news stories that report candidates and campaign activities. Coverage of such news 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. The 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?¹⁰¹

¹⁰¹ See *Election Year Issues* at 369-70.

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. The 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. The 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 viewpoint, 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.¹⁰²

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.¹⁰³

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.

Example 16: Church X is a section 501(c)(3) organization. X publishes a member newsletter on a regular basis. Individual church members are invited to send in updates about their activities which are printed in each edition of the newsletter. After receiving an update letter from Member Q, X prints the following: "Member Q is running for city council in Metropolis." The newsletter does not contain any reference to this election or to Member Q's candidacy

¹⁰² See *Election Year Issues* at 384.

¹⁰³ See Rev. Rul. 2007-41.

other than this statement of fact. Church X has not intervened in a political campaign.¹⁰⁴

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 1. 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.¹⁰⁵

Example 2. The facts are the same as in the preceding example 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, Church N includes a statement that the order of the speakers was determined at random and the fourth candidate declined the church's invitation to speak. Minister E makes the same statement in his opening remarks where one of the candidates is speaking. Church N's actions do not constitute political campaign intervention.¹⁰⁶

Example 3. Minister F is the minister of Church O, a section 501(c)(3) organization. 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

¹⁰⁴ See Example 3, Pub. 1828 at 12; Situation 12, Rev. Rul. 2007-41.

¹⁰⁵ See Example 1, Pub. 1828 at 11.

¹⁰⁶ See Example 2, Pub. 1828 at 11.

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.¹⁰⁷

In November 2013, Treasury and the IRS proposed a rule in which a person's appearance at an organization's event, including appearances in the pulpit, within 30 days of a primary election or 60 days of a general election in which the person is a candidate would constitute candidate-related political activity (see [Candidate-Related Political Activity](#), above) by the organization. That proposed rule was not promulgated as a final regulation and does not impact section 501(c)(3) Catholic organizations.

Pulpit Freedom Sunday

Catholic organizations considering participating in Alliance Defending Freedom's "Pulpit Freedom Sunday" should consult with the bishop in their diocese, because he should decide whether the possible risks of participation outweigh the possible rewards. Any organization considering participating should be aware that participation or intervention in a political campaign on behalf of or in opposition to any candidate is contrary to the statutory qualification requirements for section 501(c)(3) organizations. If the IRS determines that an organization has violated this absolute prohibition against political campaign intervention, the IRS may revoke the organization's tax-exempt status, including its ability to receive tax-deductible contributions.¹⁰⁸ In addition, or in lieu of revocation, the IRS may impose excise taxes. If the participating "organization" is parish that is not separately incorporated from its diocese, then the diocese may be penalized for the actions of the pastor.

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.¹⁰⁹

¹⁰⁷ See Example 3, Pub. 1828 at 11.

¹⁰⁸ See *Branch Ministries v. Rossotti*, 211 F.3d 137 (D.C. Cir. 2000).

¹⁰⁹ 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); TAM 963503 (Apr. 19, 1995) (organization that published its rating of candidates violated political campaign intervention prohibition).

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 organizations' 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 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 to affiliated Catholic users only, it should not be made available to candidates or political parties; (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 a candidate 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. 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.¹¹⁰

Provision of Facilities and Property for Free

Consistent with the rules provided above, a Catholic organization may provide its facilities or property, without cost, to candidates, political parties or political committees, if the organization *customarily* provides free access to its facilities to community groups and they are made available to all candidates or parties without preference and on the same terms as all other groups using the meeting space. Under federal election law, permitting the use of such real or personal property by a church other Catholic organization should not be considered a contribution.¹¹¹

¹¹⁰ Situation 17, Rev. Rul. 2007-41.

¹¹¹ See 52 U.S.C. § 30101(8)(B)(ii); 11 C.F.R. § 114.13.

Sharing Resources with Section 501(c)(4) Organizations

A section 501(c)(3) Catholic organization may be affiliated with a section 501(c)(4) organization, such as a state Catholic conference, whose primary activities are education and advocacy concerning issues of importance to the Catholic church. The 501(c)(3) organization is permitted to rent office space to the 501(c)(4) organization, and also cost-share employees and other resources and overhead expenses. It is strongly recommended that such agreements be in writing and that the 501(c)(3) organization receive fair market value for its resources that are leased to or shared with the 501(c)(4) organization. Failure to do so could cause activities of the 501(c)(4) organization to be attributed to the 501(c)(3) organization because those activities are being “subsidized” by the latter.

The section 501(c)(3) organization should also take care to ensure that the separateness of the two organizations is appropriately respected, considering the same factors relevant in determining whether a plaintiff may “pierce the corporate veil.” For example, the organizations should have separate logos, websites, email addresses, letterhead and social media accounts.

Example. Organization A is a section 501(c)(3) organization affiliated with Organization Z, a section 501(c)(4) organization. The governing instruments for the organizations require that two-thirds of their board of directors be identical. Organization A shares office space and employees with Organization Z pursuant to a written agreement whereby Organization Z reimburses Organization A for the fair market value of its share of all costs. Organization Z’s website is “nested” within Organization A’s website. The content between the two organizations’ websites is separate. However, on every webpage, Organization A’s banner, logo and information links (e.g., “About Us,” “Support Us” and “Site Map,” etc.) appear along the top, left and bottom. Organization Z’s content, including its own logo, appears within these pages, with Organization A’s information bordering its pages on three sides. Organization Z distributed nonpartisan candidate questionnaires and endorsed candidates for public office on its website. Because of the structure of the websites, Organization Z’s actions constitute political campaign intervention by Organization A.¹¹²

Signs on Church Property

Placement of political signs is essentially an attribution issue. With the limited 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.

¹¹² See TAM 200908050 (February 20, 2009).

Student Activities

As section 501(c)(3) organizations, Catholic educational institutions are prohibited from engaging in political campaign activity, and should consult local legal counsel as appropriate. Section 501(c)(3) does not prohibit individual political activity by 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.¹¹³

Example. 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.¹¹⁴

Voter Guides

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 political campaign intervention becomes a potential issue. The IRS has identified the following criteria for determining whether publication or distribution of the results of a candidate questionnaire violates the political campaign intervention 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

¹¹³ See *Election Year Issues* at 377-8; Rev. Rul. 72-512, 1972-2 C.B. 246.

¹¹⁴ See Rev. Rul. 72-513, 1972-2 C.B. 246.

foreign policy. Rather, they can be questioned on a broad range of education issues relevant to school board office.¹¹⁵

Bias

Although the Code 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.

The 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.¹¹⁶

Example 1. Church R, a section 501(c)(3) organization, 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 of 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.¹¹⁷

Example 2. Church S, a section 501(c)(3) organization, 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.¹¹⁸

¹¹⁵ See Rev. Rul. 2007-41; *Election Year Issues* at 371-2; Rev. Rul. 78-248, Situation 4.

¹¹⁶ See Rev. Rul. 78-248, Situations 2 and 3.

¹¹⁷ See Example 1, Pub. 1828 at 13.

¹¹⁸ See Example 2, Pub. 1828 at 13.

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 should not be disseminated. 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.¹¹⁹

Tip. Candidate questionnaires that permit open-ended rather than yes/no responses are more likely to be educational and less likely to exhibit bias by the Catholic organization. If candidate questionnaires that cover a wide variety of issues that are of interest to the electorate as a whole are distributed, do not use checkmarks or Xs or similar indicia to indicate whether a candidate's response is or is not in accord with the organization's positions.¹²⁰

In November 2013, Treasury and the IRS proposed a rule in which the preparation or distribution of a voter guide, regardless of whether it was done in a neutral manner and without exhibiting bias, would constitute candidate-related political activity (see [Candidate-Related Political Activity](#), above) by the organization. That proposed rule was not promulgated as a final regulation and does not impact section 501(c)(3) Catholic organizations.

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

¹¹⁹ See 11 C.F.R. § 114.4(c)(5); *Election Year Issues* at 372, fn. 21.

¹²⁰ See Rev. Rul. 78-248, Situation 2; TAM 9635003 (organization that published a questionnaire with brief response statements from candidates did not constitute political campaign intervention, although in prior years it did intervene in political campaigns when it published its editorial ratings of the participating candidates).

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 any voter education materials prepared by outside organizations.

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.¹²¹

On the other hand, the 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, would avoid violating the political campaign intervention prohibition only in extremely limited circumstances. The criteria established by the 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.¹²²

In addition, the 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*.¹²³

¹²¹ See Rev. Rul. 78-248, Situation 1; *Election Year Issues* at 370-71.

¹²² See Rev. Rul. 80-282, 1980-2 C.B. 178.

¹²³ See Rev. Rul. 78-248, Situation 4.

In November 2013, Treasury and the IRS proposed a rule in which the preparation or distribution of a voter guide, regardless of whether it was done in a neutral manner and without exhibiting bias, would constitute candidate-related political activity (see [Candidate-Related Political Activity](#), above) by the organization. That proposed rule was not promulgated as a final regulation and does not impact section 501(c)(3) Catholic organizations.

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 political viewpoint 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.

The 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 GOTV 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 1. Church T, a section 501(c)(3) organization, 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. Church T is not engaged in political campaign intervention when it operates this voter registration booth.¹²⁴

¹²⁴ See Example 3, Pub. 1828 at 13; Situation 1, Rev. Rul. 2007-41.

Example 2. Church C is a section 501(c)(3) organization. C’s activities include educating its members on family issues involving moral values. Candidate G is running for the state legislature and an important element of her platform is challenging the incumbent’s views on family issues. 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 family 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.¹²⁵

Targeting voter registration drives at historically disadvantaged groups, whether based on economic status, race, gender or language, generally should not be objectionable. In addition, the 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.¹²⁶

In November 2013, Treasury and the IRS proposed a rule in which voter registration drives or “get out the vote” drives, regardless of whether they are done in a neutral manner and without exhibiting bias, would constitute candidate-related political activity (see [Candidate-Related Political Activity](#), above) by the organization. That proposed rule was not promulgated as a final regulation and does not impact section 501(c)(3) Catholic organizations.

Websites, E-Mail, Social Media

There are no special rules applicable to political campaign intervention via electronic media. The IRS treats dissemination of communications that constitute political campaign intervention via an exempt organization website in the same manner as communications disseminated via print or other media. An exempt organization is responsible for the content on its own website. It is also responsible for the content on webpages of other organizations that are directly linked from its website. Accordingly, an organization should monitor the content of all linked webpages. Links to candidate-related materials are not *per se* problematic. The IRS has indicated that it 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

¹²⁵ See Example 4, Pub. 1828 at 13; Situation 2, Rev. Rul. 2007-41.

¹²⁶ 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).

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 that indicate support for or opposition to candidates.¹²⁷

The following information posted on a Catholic organization’s website or contained in an e-mail communication sent from the organization’s computers can be expected to be viewed by the IRS as constituting political campaign intervention: (a) selective links to websites maintained by a candidate, PAC or political party; (b) endorsements of or statements of opposition to any candidate; (c) biased voter education materials; and (d) links to webpages of other organizations containing any of the same information.

Example 1. 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.¹²⁸

Example 2. Church 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 [Voter Guides](#), 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.¹²⁹

Example 3. Church N, a section 501(c)(3) organization, maintains a web site that includes such information as staff listings; directions to the church; and descriptions of its community outreach programs, schedules of services, and school activities. On one page of the web site, Church N describes a particular type of treatment program for homeless veterans. This section includes a link to an article on the web site of O, a major national newspaper, praising Church N’s treatment program for homeless veterans. The page containing the article on O’s web site does not refer to any candidate or election and has no direct links to

¹²⁷ Rev. Rul. 2007-41.

¹²⁸ See Example 1, Pub. 1828 at 14 (right-hand side); Situation 21, Rev. Rul. 2007-41.

¹²⁹ See Example 3, Pub. 1828 at 15; Situation 19, Rev. Rul. 2007-41.

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. Church N has not intervened in a political campaign by maintaining a link to the article on O's web site because the link is provided for the exempt purpose of educating the public about its programs; the context for the link, the relationship between Church N and O and the arrangement of the links going from Church N's web site to the endorsement on O's web site do not indicate that Church N was favoring or opposing any candidate.¹³⁰

Blogs and various social networking sites like Facebook, Twitter and YouTube can present risks of political campaign intervention for unwary organizations. The IRS has not provided guidance about the application of the prohibition against political campaign intervention to social media communications. After evaluating all facts and circumstances, the critical questions in every instance will be: (1) whether the post or communication at issue expresses an opinion about a candidate – pro or con; and (2) whether that communication is attributable to the Catholic organization. For example, is an organization's "friending" or "following" a political candidate tantamount to an endorsement or preference for that candidate? What about a church employee tweeting, texting or e-mailing about candidates during work hours? How do these employees identify themselves? Are they using the church-provided facilities? Are these postings part of their job responsibilities? What about blogs? A Catholic organization is responsible for blog content posted on its website by its employees, but is the organization also responsible for guest blogger postings? What about user comments? What if the organization undertakes to moderate postings and selectively deletes posts according to content? Catholic organizations should seek local legal advice regarding political content or links to political content on their websites, e-mails and social media.

¹³⁰ See Example 2, Pub. 1828 at 14 (right-hand side); Situation 20, Rev. Rul. 2007-41.