



THE REAL RULES

Congregations and the IRS Guidelines On Advocacy, Lobbying, and Elections



**Unitarian Universalist Association of Congregations
Washington Office for Advocacy**

666 11th Street NW, Suite 800
Washington, DC 20001

(202) 393-2255
(202) 393-5494 fax

socialjustice@uua.org
www.uua.org/socialjustice

Introduction

Religious individuals and groups have played a prophetic role in public life throughout history by calling attention to oppression, demanding change, and holding leaders and institutions accountable for their actions and policies. While this is still true in the United States today, too many people are under the false impression that religious organizations cannot have a voice in the public policy arena as a result of the Constitutional separation of church and state or Internal Revenue Service (IRS) regulations. In reality, there are many activities that any religious group can do without jeopardizing its nonprofit tax-exempt status. There are restrictions on certain kinds of political actions, but the range of what is acceptable is wide enough to exhaust the time and resources of any congregation without crossing any legal lines.

This guide is composed largely of direct quotes from the most recent and relevant IRS publications, organized in a way that is intended to be user-friendly. All references are clearly documented with footnotes. The most authoritative IRS publication on nonprofits and electoral/political activity is Revenue Ruling 2007-41, released June 18, 2007. While an excellent source of information, it is not designed for a general audience. The more accessible IRS resource is publication 1828, *Tax Guide for Churches and Religious Organizations*. (Rev. 9-2006). To access these documents, visit <http://www.irs.gov/charities/churches/index.html>.

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Important Disclaimer

This resource is not intended to be formal legal advice; nor should it be used in place of legal counsel. It is intended to clarify Internal Revenue Service guidelines as they relate to religious organizations in the hope that more congregations will (1) choose to become involved in working for justice; and (2) know when it is important to seek legal advice.

About the UUA Washington Office for Advocacy

The mission of the Washington Office for Advocacy is to influence public policy decisions made by the US Congress and Administration on issues of concern to the Unitarian Universalist Association. The Office also provides support and resources to congregations and individuals seeking to create change in their communities and states. For more information, please see www.uua.org/socialjustice.

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SUMMARY: THE THREE-POINT SYSTEM

The IRS regulations on the activities of congregations can be summarized as follows:

1. **ISSUE ADVOCACY: Without limits on time, effort and expense**, congregations and their representatives may engage in **issue advocacy** through activities such as educating and mobilizing congregants and the general public. Example: encouraging the public to show concern for global warming by reducing carbon emissions. Please note that issue advocacy is only acceptable if it does not involve political campaign intervention (see below).
2. **LOBBYING: Within narrow limits on time, effort and expense**, congregations and their representatives may engage in **lobbying**—defined by the IRS as advocating for or against specific pieces of legislation—as an "unsubstantial" portion of an organization's activities. The IRS has not provided a strict rule for what constitutes "unsubstantial," and evaluates on a case-by-case basis. However, courts and the IRS have ruled in the past that lobbying activity constituting 5% or less of total activities is acceptable. "Total activities" includes the total amount of money, staff, and volunteer time that goes into running the organization. While the 5% amount is not a strict rule, it can be used as a guidepost for an organization's lobbying activities. Example: encouraging a city council, state legislature, and/or Congress to pass a particular law to reduce carbon emissions.
3. **POLITICAL CAMPAIGN INTERVENTION: There is a total limit on partisan activity**, which the IRS calls **political campaign intervention**. Congregations and their representatives can do nothing that advocates for or against candidates for public office or political parties. This includes fundraising on behalf of candidates and donating meeting space, among other things. Example: supporting a particular candidate or party because of their stance on carbon emissions. Election-related activities such as candidate questionnaires and forums may be acceptable if certain guidelines are followed; consult section C., "Political (Electoral) Activities" of this guide for details.

Please Note:

The restrictions on lobbying and political campaign intervention described here apply only to a congregation as a legal entity, or to a person or group speaking in the name of the congregation. A minister or congregation member may freely engage in these activities as an individual. However, if the person(s) are identified by or likely to be associated with the congregation, it may be helpful to clearly state that they are speaking as individuals.

A. TAX-EXEMPT STATUS: WHAT IS A 501(c)(3)?¹

Congregations and religious organizations, like many other charitable organizations, qualify for exemption from federal income tax under Internal Revenue Code (IRC) Section 501(c)(3) and are generally eligible to receive tax-deductible contributions. In order to qualify for tax exemption, an organization must meet the following requirements:

- the organization must be organized and operated exclusively for religious, educational, scientific, or other charitable purposes,
- net earnings may not inure to the benefit of any private individual or shareholder,
- no substantial part of its activity may be attempting to influence legislation,
- the organization may not intervene in political campaigns, and
- the organization's purposes and activities may not be illegal or violate fundamental public policy.

Although there is no requirement to do so, many congregations seek recognition of tax-exempt status from the IRS because such recognition assures congregational leaders, members, and contributors that the congregation is recognized as exempt and qualifies for related tax benefits.

Please Note:²

The term "church" is found, but not specifically defined, in the Internal Revenue Code. IRS Publication 1828 uses the word church, "in its generic sense as a place of worship including, for example, mosques and synagogues." *The Real Rules* uses "congregation," believing it to be a more inclusive term. It should be noted that the IRS makes a distinction between congregations (which includes conventions and associations of congregations as well as integrated auxiliaries of a congregation) and religious organizations. "Religious organizations that are not [congregations] typically include nondenominational ministries, interdenominational and ecumenical organizations and other entities whose principal purpose is the study or advancement of religion." For a complete definition of terms, see the glossary at the end of Publication 1828.

¹ Section A is derived from *Tax Guide for Churches and Religious Organizations*. IRS Publication 1828 (Rev. 9-2006), p. 3.

² This note is derived from IRS Publication 1828, p. 2.

B. ADVOCACY and LOBBYING

1) General Issue Advocacy

There is no limit on the amount of time, effort, or expense congregations may devote to working on general issues such as civil rights, civil liberties, economic justice, the environment, or peace. Some of the many acceptable activities include: advocating positions in the media and to elected officials; educating and mobilizing congregants and the general public, and working in local coalitions or partnerships on issues of social justice.

2) Influencing Legislation (Lobbying)³

In general, no organization, including a congregation, may qualify for Internal Revenue Code 501(c)(3) status if a substantial part of its activities is attempting to influence legislation (commonly known as lobbying). "Legislation" includes:

- Action by Congress, any state legislature, any local council, or similar governing body, with respect to acts, bills, resolutions, or similar items (such as legislative confirmation of appointive offices); or
- [Action] by the public in a referendum, ballot initiative, constitutional amendment or similar procedure.

[Legislation] does not include actions by executive, judicial, or administrative bodies.

A congregation or religious organization will be regarded as *attempting to influence legislation* if it contacts, or urges the public to contact, members or employees of a legislative body for the purpose of proposing, supporting, or opposing legislation, or if the organization advocates the adoption or rejection of legislation.

a) Measuring Lobbying: the Substantial Part Test⁴

Whether or not a congregation's attempts to influence legislation constitute a substantial part of its overall activities is determined on the basis of all the pertinent facts and circumstances in each case. The IRS considers a variety of factors, including the time devoted (by both compensated and volunteer workers) and the expenditures devoted by the organization to the activity, when determining whether the lobbying activity is substantial.

Although the IRS has not defined what is "substantial," courts and the IRS have ruled in the past that lobbying activities constituting 5% or less of total activities is acceptable. The IRS has also noted that where 16 to 20% of total activities have been devoted to lobbying, those activities have generally been considered "substantial."⁵

³ This first section of B2 is a direct quote from IRS Publication 1828, p. 5.

⁴ The first paragraph of B2a is a direct quote from IRS Publication 1828, p. 5.

⁵ The second paragraph of B2a is derived from *Lobbying Issues in Exempt Organizations* Judith E. Kindell & John F. Reilly. Continuing Professional Education Technical Instruction Program for Fiscal Year 1997, 277 n.20 (1996), p. 280.

b) Lobbying During Election Years⁶

Congregations may support or criticize legislators, lobby them, and work to hold them accountable. However, close to an election, the IRS may view a sudden entry into the political arena as partisan. A track record of consistent activity is the best safeguard against these charges.

c) Nonpartisan Analysis⁷

Congregations may sponsor and distribute to their members, the general public, or governmental bodies, a “nonpartisan analysis, study, or research” of legislation (including ballot measures, referenda, state constitutional amendments, city charter amendments, etc.) without the activity being considered lobbying or partisan. Such nonpartisan analysis must be independent and objective in order to not count as lobbying. However, it “may advocate a particular position or viewpoint so long as there is sufficiently full and fair presentation of the pertinent facts to enable the public or an individual to form an opinion or conclusion, as opposed to the mere presentation of unsupported opinion”.

If you plan to produce an analysis that will be used for lobbying, meaning that it will encourage readers to take action on legislation (which is permissible), be sure to include the money and time spent on it in your substantial part calculations.

⁶ Section B2b is derived from *The Rules of the Game: An Election Year Legal Guide for Nonprofit Organizations*. Colvin, Gregory L. and Lowell Finley. Alliance for Justice. (1996), p. 18.

⁷ Section B2c is derived from *Lobbying Issues in Exempt Organizations*, p. 274, 302.

C. POLITICAL (ELECTORAL) ACTIVITIES

A 501(c)(3) organization “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.”⁸

“Whether an organization is participating or intervening, directly or indirectly, in any political campaign on behalf of or in opposition to any candidate for public office depends upon all of the facts and circumstances of each case. For example, certain ‘voter education’ activities, including preparation and distribution of certain voter guides, conducted in a nonpartisan manner may not constitute prohibited political activities under section 501(c)(3) of the Code.

“Other so-called ‘voter education’ activities may be proscribed by the statute ...if they show a bias or preference in content or structure with respect to the views of a particular candidate.”⁹

1) Supporting/Opposing Candidates

a) Endorsements/Advertising

Congregations may not: issue letters of endorsement or opposition printed on congregation letterhead; distribute campaign literature at congregational events; display campaign signs on congregation property, or engage in any other activities that could be construed as endorsing or opposing a candidate. This applies to elections at all levels, from school board to national offices, regardless of whether or not it is a partisan election.

b) Financial Contributions

Congregations may not: contribute money to candidates, solicit contributions on a candidate’s behalf, donate to candidate’s political action committees, or create political action committees of their own. Individuals may not fundraise for candidates at the congregation (except in compliance with the guidelines in the next section), or use congregational letterhead or other official materials for such purposes.

c) Business Activity¹⁰

The question of whether an activity constitutes participation or intervention in a political campaign may also arise in the context of a business activity of the organization, such as selling or renting of mailing lists, the leasing of office space, or the acceptance of paid political advertising. In this context, some of the factors to be considered in determining whether the organization has engaged in political campaign intervention include the following:

- Whether the good, service or facility is available to candidates in the same election on an equal basis,
- Whether the good, service, or facility is available only to candidates and not to the general public,
- Whether the fees charged to candidates are at the organization’s customary and usual rates, and
- Whether the activity is an ongoing activity of the organization or whether it is conducted only for a particular candidate.

⁸ IRS Revenue Ruling 2007-41, 2007-25 I.R.B. (June 18, 2007), p. 1.

⁹ IRS Revenue Ruling 2007-41, p. 2.

¹⁰ Section C1c is a direct quote from IRS Revenue Ruling 2007-41, p. 10-11.

d) Individual Activity by Religious Leaders¹¹

The political campaign intervention prohibition is not intended to restrict free expression on political matters by leaders of organizations speaking for themselves, as individuals. Nor are leaders prohibited from speaking about important issues of public policy. However, for their organizations to remain tax exempt under section 501(c)(3), leaders cannot make partisan comments in official organization publications or at official functions of the organization.

Example 4: President B is the president of University K, a section 501(c)(3) organization. University K publishes a monthly alumni newsletter that is distributed to all alumni of the university. In each issue, President B has a column titled “My Views.” The month before the election, President B states in the “My Views” column, “It is my personal opinion that Candidate U should be reelected.” For that one issue, President B pays from his personal funds the portion of the cost of the newsletter attributable to the “My Views” column. Even though he paid part of the cost of the newsletter, the newsletter is an official publication of the university. Because the endorsement appeared in an official publication of University K, it constitutes campaign intervention by University K.

Example 5: Minister C is the minister of Church L, a section 501(c)(3) organization and Minister C is well known in the community. Three weeks before the election, he attends a press conference at Candidate V’s campaign headquarters and states that Candidate V should be reelected. Minister C does not say he is speaking on behalf of Church L. His endorsement is reported on the front page of the local newspaper and he is identified in the article as the minister of Church L. Because Minister C did not make the endorsement at an official church function, in an official church publication or otherwise use the church’s assets, and did not state that he was speaking as a representative of Church L, his actions do not constitute campaign intervention by Church L.

¹¹ Section C1d is a direct quote from IRS Revenue Ruling 2007-41, p. 4.

2) Inviting a Candidate to Speak¹²

Depending on the facts and circumstances, an organization may invite political candidates to speak at its events without jeopardizing its tax-exempt status. Political candidates may be invited in their capacity as candidates, or in their individual capacity (not as a candidate). Candidates may also appear without an invitation at organization events that are open to the public.

When a candidate is invited to speak at an organization event in his or her capacity as a political candidate, factors in determining whether the organization participated or intervened in a political campaign include the following:

- Whether the organization provides an equal opportunity to participate to political candidates seeking the same office;
- Whether the organization indicates any support for or opposition to the candidate (including candidate introductions and communications concerning the candidate's attendance); and
- Whether any political fundraising occurs.

a) Equal Opportunity to Participate

In determining whether candidates are given an equal opportunity to participate, the nature of the event to which each candidate is invited will be considered, in addition to the manner of presentation. For example, an organization that invites one candidate to speak at its well attended annual banquet, but invites the opposing candidate to speak at a sparsely attended general meeting, will likely have violated the political campaign prohibition, even if the manner of presentation for both speakers is otherwise neutral.

b) Public Forum

When an organization invites several candidates for the same office to speak at a public forum, factors in determining whether the forum results in political campaign intervention include the following:

- Whether questions for the candidates are prepared and presented by an independent nonpartisan panel,
- Whether the topics discussed by the candidates cover a broad range of issues that the candidates would address if elected to the office sought and are of interest to the public,
- Whether each candidate is given an equal opportunity to present his or her view on each of the issues discussed,
- Whether the candidates are asked to agree or disagree with positions, agendas, platforms or statements of the organization, and
- Whether a moderator comments on the questions or otherwise implies approval or disapproval of the candidates.

Situation 7. 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.

¹² Section C2 is a direct quote from IRS Revenue Ruling 2007-41, p. 5-7.

Society N's publicity announcing the dates for each of the candidate's speeches and President E's introduction of each candidate include no comments on their qualifications or any indication of a preference for any candidate. Society N's actions do not constitute political campaign intervention.

Situation 8. The facts are the same as in Situation 7 except that there are four candidates in the race rather than three, and one of the candidates declines the invitation to speak. In the publicity announcing the dates for each of the candidate's speeches, Society N includes a statement that the order of the speakers was determined at random and the fourth candidate declined the Society's invitation to speak. President E makes the same statement in his opening remarks at each of the meetings where one of the candidates is speaking. Society N's actions do not constitute political campaign intervention.

Situation 9. Minister F is the minister of Church O, a section 501(c)(3) organization. The Sunday before the November election, Minister F invites Senate Candidate X to preach to her congregation during worship services. During his remarks, Candidate X states, "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 invites no other candidate to address her congregation during the Senatorial campaign. Because these activities take 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.

c) Candidate Appearances Where Speaking or Participating as a Non-Candidate

Candidates may also appear or speak at organization events in a non-candidate capacity. For instance, a political candidate may be a public figure who is invited to speak because he or she: (a) currently holds, or formerly held, public office; (b) is considered an expert in a non political field; or (c) is a celebrity or has led a distinguished military, legal, or public service career. A candidate may choose to attend an event that is open to the public, such as a lecture, concert or worship service. The candidate's presence at an organization-sponsored event does not, by itself, cause the organization to be engaged in political campaign intervention. However, if the candidate is publicly recognized by the organization, or if the candidate is invited to speak, factors in determining whether the candidate's appearance results in political campaign intervention include the following:

- Whether the individual is chosen to speak solely for reasons other than candidacy for public office;
- Whether the individual speaks only in a non-candidate capacity;
- Whether either the individual or any representative of the organization makes any mention of his or her candidacy or the election;
- Whether any campaign activity occurs in connection with the candidate's attendance;
- Whether the organization maintains a nonpartisan atmosphere on the premises or at the event where the candidate is present; and
- Whether the organization clearly indicates the capacity in which the candidate is appearing and does not mention the individual's political candidacy or the upcoming election in the communications announcing the candidate's attendance at the event.

For scenarios of what is or is not political campaign intervention in this area, see situations 10-13 in IRS Ruling 2007-41, p. 7-8.

3) Voter Guides¹³

Voter guides are usually pamphlets or other short documents, often in chart form, intended to help voters compare candidates' positions on a set of issues. Preparing or distributing a voter guide may violate the prohibition against political campaign intervention if the guide focuses on a single issue or narrow range of issues, or if the questions are structured to reflect bias. Although any document that identifies candidates and their positions close in time to an election has the potential to result in political campaign intervention, preparation or distribution of voter guides, because of their nature, present a particular risk for noncompliance. The following factors are key considerations in whether a voter guide can be distributed to educate voters without violating the prohibition on political campaign intervention:

- Whether the questions and any other description of the issues are clear and unbiased in both their structure and content.
- Whether the questions posed or provided to the candidates are identical to [the questions] included in the voter guide.
- Whether the candidates are given a reasonable amount of time to respond to the questions. If the candidate is given limited choices for an answer to a question (e.g. yes/no, support/oppose), whether the candidate is also given a reasonable opportunity to explain his position in his own words and that explanation is included in the voter guide.
- Whether the answers in the voter guide are those provided by the candidates in response to the questions, including whether the candidate's answers are unedited, and whether they appear in close proximity to the question to which they respond.
- Whether all candidates for a particular office are covered.
- Whether the number of questions, and the subjects covered, are sufficient to encompass most major issues of interest to the entire electorate.

In assessing whether a voter guide is unbiased and nonpartisan, every aspect of the voter guide's format, content and distribution must be taken into consideration. If the organization's position on one or more issues is set out in the guide so that it can be compared to the candidates' positions, the guide will constitute political campaign intervention.

An organization may be asked to distribute voter guides prepared by a third party. Each organization that distributes one or more voter guides is responsible for its own actions. If the voter guide is biased, distribution of the voter guide is an act of political campaign intervention. Therefore, an organization should reach its own independent conclusion about whether a voter guide prepared by itself or prepared by a third party covers a broad scope of issues and uses neutral form and content.

¹³ Section C3 is a direct quote from IRS memo FS-2006-17, February 2006.

4) Voter Registration and Get-Out-The-Vote (GOTV) Drives¹⁴

Section 501(c)(3) organizations are permitted to conduct certain voter education activities (including the presentation of public forums and the publication of voter education guides) if they are carried out in a nonpartisan manner. In addition, section 501(c)(3) organizations may encourage people to participate in the electoral process through voter registration and get-out-the-vote drives, conducted in a nonpartisan manner. On the other hand, voter education or registration activities conducted in a biased manner that favors (or opposes) one or more candidates is prohibited.

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

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

In order to qualify as nonpartisan, voter registration and get-out-the-vote drives cannot be biased for or against any candidate or party. Some commentators suggest that it is acceptable for nonprofits to focus their efforts in nonpartisan ways, such as on low-turnout areas, low-income populations, minority populations, students, and/or the areas or people the nonprofits serve.¹⁵

¹⁴ Except for the final paragraph (see next reference), Section C4 is a direct quote from IRS Revenue Ruling 2007-41, p. 3-4

¹⁵ This final paragraph is derived from "Minnesota Participation Project: Election Cycle Dos and Don'ts for 501(c)(3) Organizations," available at www.npaction.org.

D. ISSUE ADVOCACY VS. POLITICAL CAMPAIGN INTERVENTION

1) General Guidelines¹⁶

Section 501(c)(3) organizations may take positions on public policy issues, including issues that divide candidates in an election for public office. However, section 501(c)(3) organizations must avoid any issue advocacy that functions as political campaign intervention. Even 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. A statement can identify a candidate not only by stating the candidate's name but also by other means such as showing a picture of the candidate, referring to political party affiliations, or other distinctive features of a candidate's platform or biography. All the facts and circumstances need to be considered to determine if the advocacy is political campaign intervention.

Key factors in determining whether a communication results in political campaign intervention include the following:

- Whether the statement identifies one or more candidates for a given public office;
- Whether the statement expresses approval or disapproval for one or more candidates' positions and/or actions;
- Whether the statement is delivered close in time to the election;
- Whether the statement makes reference to voting or an election;
- Whether the issue addressed in the communication has been raised as an issue distinguishing candidates for a given office;
- 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
- 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.

A communication is particularly at risk of political campaign intervention when it makes reference to candidates or voting in a specific upcoming election. Nevertheless, the communication must still be considered in context before arriving at any conclusions.

Example 14: University O, a section 501(c)(3) organization, prepares and finances a full page newspaper advertisement that is published in several large circulation newspapers in State V shortly before an election in which Senator C is a candidate for nomination in a party primary. Senator C represents State V in the United States Senate. The advertisement states that S. 24, a pending bill in the United States Senate, would provide additional opportunities for State V residents to attend college, but Senator C has opposed similar measures in the past. The advertisement ends with the statement "Call or write Senator C to tell him to vote for S. 24."

¹⁶ Section D1 is a direct quote from IRS Revenue Ruling 2007-41, p. 8-10.

Educational issues have not been raised as an issue distinguishing Senator C from any opponent. S. 24 is scheduled for a vote in the United States Senate before the election, soon after the date that the advertisement is published in the newspapers. Even though the advertisement appears shortly before the election and identifies Senator C's position on the issue as contrary to O's position, University O has not violated the political campaign intervention prohibition because the advertisement does not mention the election or the candidacy of Senator C, education issues have not been raised as distinguishing Senator C from any opponent, and the timing of the advertisement and the identification of Senator C are directly related to the specifically identified legislation University O is supporting and appears immediately before the United States Senate is scheduled to vote on that particular legislation. The candidate identified, Senator C, is an officeholder who is in a position to vote on the legislation.

Example 15: Organization R, a section 501(c)(3) organization that educates the public about the need for improved public education, prepares and finances a radio advertisement urging an increase in state funding for public education in State X, which requires a legislative appropriation. Governor E is the governor of State X. The radio advertisement is first broadcast on several radio stations in State X beginning shortly before an election in which Governor E is a candidate for re-election. The advertisement is not part of an ongoing series of substantially similar advocacy communications by Organization R on the same issue. The advertisement cites numerous statistics indicating that public education in State X is under funded. While the advertisement does not say anything about Governor E's position on funding for public education, it ends with "Tell Governor E what you think about our under-funded schools." In public appearances and campaign literature, Governor E's opponent has made funding of public education an issue in the campaign by focusing on Governor E's veto of an income tax increase the previous year to increase funding of public education. At the time the advertisement is broadcast, no legislative vote or other major legislative activity is scheduled in the State X legislature on state funding of public education. Organization R has violated the political campaign prohibition because the advertisement identifies Governor E, appears shortly before an election in which Governor E is a candidate, is not part of an ongoing series of substantially similar advocacy communications by Organization R on the same issue, is not timed to coincide with a non election event such as a legislative vote or other major legislative action on that issue, and takes a position on an issue that the opponent has used to distinguish himself from Governor E.

Example 16: 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 for 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.

2) Websites¹⁷

The Internet has become a widely used communications tool. Section 501(c)(3) organizations use their own web sites to disseminate statements and information. They also routinely link their web sites to web sites maintained by other organizations as a way of providing additional information that the organizations believe is useful or relevant to the public.

A web site is a form of communication. If an organization posts something on its web site that favors or opposes a candidate for public office, the organization will be treated the same as if it distributed printed material, oral statements or broadcasts that favored or opposed a candidate.

An organization has control over whether it establishes a link to another site. When an organization establishes a link to another web site, the organization is responsible for the consequences of establishing and maintaining that link, even if the organization does not have control over the content of the linked site. Because the linked content may change over time, an organization may reduce the risk of political campaign intervention by monitoring the linked content and adjusting the links accordingly.

Links to candidate-related material, by themselves, do not necessarily constitute political campaign intervention. All the facts and circumstances must be taken into account when assessing whether a link produces that result. The facts and circumstances to be considered include, but are not limited to, the context for the link on the organization's web site, whether all candidates are represented, any exempt purpose served by offering the link, and the directness of the links between the organization's web site and the web page that contains material favoring or opposing a candidate for public office.

Situation 19. 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 Rev. Rul. 78-248. For each candidate covered in the voter guide, M includes a link to that candidate's official campaign web site. The links to the candidate web sites are presented on a consistent neutral basis for each candidate, with text saying "For more information on Candidate X, you may consult [URL]." M has not intervened in a political campaign because the links are provided for the exempt purpose of educating voters and are presented in a neutral, unbiased manner that includes all candidates for a particular office.

Situation 20. Hospital N, a section 501(c)(3) organization, maintains a web site that includes such information as medical staff listings, directions to Hospital N, and descriptions of its specialty health programs, major research projects, and other community outreach programs. On one page of the web site, Hospital N describes its treatment program for a particular disease. At the end of the page, it includes a section of links to other web sites titled "More Information." These links include links to other hospitals that have treatment programs for this disease, research organizations seeking cures for that disease, and articles about treatment programs. This section includes a link to an article on the web site of O, a major national newspaper, praising Hospital N's treatment program for the disease. The page containing the article on O's web site contains no reference to any candidate or election and has no direct links to candidate or election information. Elsewhere on O's web site, there is a page displaying editorials that O has published. Several of the editorials endorse candidates in an election that has not yet occurred. Hospital N has not intervened in a political campaign by maintaining the link to the article on O's web site because the link is provided for the exempt purpose of

¹⁷ Section D2 is a direct quote from IRS Revenue Ruling 2007-41, p. 11-13.

educating the public about Hospital N's programs and neither the context for the link, nor the relationship between Hospital N and O nor the arrangement of the links going from Hospital N's web site to the endorsement on O's web site indicate that Hospital N was favoring or opposing any candidate.

Situation 21. 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.

3) Other Internet Communications

Like a web site, internet activities such as chat rooms, discussion boards, email groups, and listservs are forms of communication. While the IRS has not provided guidance in this area, any organization that uses these or other internet communications in an official organizational capacity would do well to treat them in the same manner as a printed communication, with the same guidelines and prohibitions.

Internet communications used by members of a congregation in a non-official capacity may or may not be subject to the IRS guidelines. Those utilizing technology owned by, maintained by or held in the name of the congregation, such as a listserv program, could be interpreted as an official activity.

Lacking clear guidance, the Unitarian Universalist Association of Congregations, based on consultation with legal counsel and our concern for congregational well-being, recommends that congregations consider the IRS guidelines as applying to any internet communications activity that is owned or supported by the congregation. While the IRS may find that communications fora that originate outside the congregation, such as a free discussion groups, might not be subject to the guidelines, the UUA recommends ensuring that equal access is given to any group that may want to discuss partisan issues. For example, a congregation that allows an unofficial discussion group of members of the congregation who are affiliated with one political party should also allow unofficial groups from other parties. The congregation may also reasonably determine that all partisan communications should be prohibited in these fora.

E. IRS Enforcement and Consequences

1) Enforcement¹⁸

There are special audit procedures that the IRS must follow before commencing any inquiry about potential violation by a church of the political campaign intervention prohibition. The IRS may begin a church tax inquiry only if the Director, Exempt Organizations, Examinations, reasonably believes, based on facts and circumstances recorded in writing, that the church may not be qualified for section 501(c)(3) tax exemption, including potential violations of the political campaign intervention prohibition. Once an inquiry is begun, the IRS must follow special procedures set forth in the Internal Revenue Code in its further dealings with the church. Thus, the IRS does not have unfettered discretion to investigate activities by churches, including violations of the political campaign intervention prohibition, and must obtain high-level authorization before doing so. Generally, IRS inquiries about potential violations by churches of the political campaign intervention prohibition are initiated based upon facts reported by the media or complaints submitted by third parties.

2) Consequences of Political Campaign Activity¹⁹

When it participates in political campaign activity, a congregation or religious organization jeopardizes both its tax-exempt status under IRC section 501(c)(3) and its eligibility to receive tax-deductible contributions. In addition, it may become subject to an excise tax on its political expenditures. This excise tax may be imposed in addition to revocation, or it may be imposed instead of revocation. Also, the congregation or religious organization should correct the violation.

Excise tax. An initial tax is imposed on an organization at the rate of 10 percent of the political expenditures. Also, a tax at the rate of 2.5 percent of the expenditures is imposed against the organization managers (jointly and severally) who, without reasonable cause, agreed to the expenditures knowing they were political expenditures. The tax on management may not exceed \$5,000 with respect to any one expenditure.

In any case in which an initial tax is imposed against an organization, and the expenditures are not corrected within the period allowed by law, an additional tax equal to 100 percent of the expenditures is imposed against the organization. In that case, an additional tax is also imposed against the organization managers (jointly and severally) who refused to agree to make the correction. The additional tax on management is equal to 50 percent of the expenditures and may not exceed \$10,000 with respect to any one expenditure.

Correction. Correction of a political expenditure requires the recovery of the expenditure, to the extent possible, and establishment of safeguards to prevent future political expenditures.

Please note that a congregation or religious organization that engages in any political campaign activity also needs to determine whether it is in compliance with the appropriate federal, state or local election laws, as these may differ from the requirements under IRC section 501(c)(3).

¹⁸ Section E1 is a direct quote from *Politics and the Pulpit 2008: A Guide to the Internal Revenue Code Restrictions on the Political Activity of Religious Organizations* Pew Forum on Religion and Public Life, p. 14.

¹⁹ Section E2 is a direct quote from IRS Publication 1828, p. 11.

F. ADDITIONAL INFORMATION AND REFERENCES

Internal Revenue Service

<http://www.irs.gov>

- Revenue Ruling 2007-41, 2007-25 I.R.B. (June 18, 2007).
- *Tax Guide for Churches and Religious Organizations*. Publication 1828 (Rev. 9-2006).
- *Election Year Activities and the Prohibition on Political Campaign Intervention for Section 501(c)(3) Organizations*. Publication FS-2006-17, February 2006
- *Lobbying Issues in Exempt Organizations* Judith E. Kindell & John F. Reilly. Continuing Professional Education Technical Instruction Program for Fiscal Year 1997, 277 n.20 (1996).

The Alliance for Justice

Phone: 202-822-6070

Email: alliance@afj.org

Web: <http://www.afj.org>

The Interfaith Alliance and The Interfaith Alliance Foundation

Phone: 202-639-6370

Email: tia@interfaithalliance.org

Web: <http://www.interfaithalliance.org>

NP Action

202-234-8494

Email: npaction@npaction.org

Web: www.npaction.org

- *Minnesota Participation Project: Election Cycle Dos and Don'ts for 501(c)(3) Organizations*

The Pew Forum on Religion & Public Life

Phone: 202-955-5075

Email: info@pewforum.org

Web: <http://pewforum.org>

- *Politics and the Pulpit 2008*