

# Staying Ahead

with Saul Ewing

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Personal Wealth, Estates and Trusts/Higher Education Groups

## 501(c)(3) Organizations and Appearances by Political Candidates

For the officers and directors of 501(c)(3) organizations, election season can be an exciting time, but it can also be filled with traps for the unwary. The IRS limits the political involvement of 501(c)(3) organizations, and for good reason – 501(c)(3) organizations are tax-exempt entities, supported by the nation's taxpayers. Because we all share in the burden of supplying this economic benefit to 501(c)(3) organizations, such entities are prohibited from participating or intervening in campaigns on behalf of (or in opposition to) any political candidates. The rules surrounding political activity by nonprofit organizations can be confusing, and failure to follow these rules can result in the imposition of special excise taxes or even, in rare instances, revocation of an organization's 501(c)(3) status.

Despite these prohibitions, however, there are still opportunities for 501(c)(3) organizations to bring their constituents into contact with political candidates. For many 501(c)(3) organizations, the issue of political involvement appears most frequently when candidates for local or national political office are invited to appear at an event hosted by the organization. When considering whether a candidate should participate in such an event, there are several general guidelines to keep in mind.

### Inviting a Candidate to Speak

The IRS has advised that a candidate may speak in his capacity as a candidate at an event hosted by a 501(c)(3) organization if several requirements are met. First, the organization must provide an equal opportunity for other candidates who are seeking the same office. This does not mean that all candidates for a particular office must be invited to the *same* event. For example, an organization can host a dinner that gives an opportunity for one candidate to speak, and can host a second similar dinner for another candidate for that same office. The second candidate need not even accept the offer to speak – for the organization to meet its burden, the opportunity must simply be extended. However, the two dinners must be equivalent. The IRS has suggested that if, for example, an organization invites one candidate to a gala banquet and the other candidate to a general meeting that is usually poorly attended, this may violate the prohibition on political intervention by 501(c)(3) organizations.

The IRS has also clarified that an organization must not indicate any support for or opposition to a candidate appearing at an event. The leaders of 501(c)(3) organizations should pay special attention to this requirement when sending out invitations, press releases and other materials leading up to a candidate's appearance. Likewise, any person giving an introduction to a candidate's speech must be aware that no support for or opposition to the candidate should be voiced.

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Lastly, although it might seem obvious, no political fundraising may occur at an event hosted by the 501(c)(3) organization.

## **Candidate Panels or Public Forums**

Because creating multiple identical opportunities for individual candidates to speak may be burdensome, a good way for 501(c)(3) organizations to expose their constituents to a variety of political viewpoints is to invite all of the candidates for the same office to speak as part of a panel at a public forum. For such a panel to avoid being labeled as prohibited political intervention, it should be run in a manner that is as egalitarian and nonpartisan as possible. For example, moderators should use caution and avoid expressing favoritism towards any particular candidate. Likewise, all candidates should be given equal speaking time. In addition, before a 501(c)(3) organization hosts a panel discussion, the organization should consider whether the topics discussed by the candidates will include a broad range of issues, and whether the candidates will be asked to agree or disagree with positions or platforms of the 501(c)(3) organization. Asking a candidate to sign a pledge on a particular issue could constitute tacit endorsement of the candidate by the organization. Knowing where to draw the line in this area can be very difficult, and 501(c)(3) organizations should consider seeking the advice of counsel before convening a panel that will focus on selective issues of interest to the organization.

## **Speaking in a Non-Candidate Capacity**

501(c)(3) organizations can also invite current political candidates to appear or speak at the organization's events in a non-candidate capacity. If a candidate appears in a non-candidate capacity, there is no requirement that other candidates be given a similar opportunity.

For example, a political candidate who has graduated from a particular college or university may give a speech at his or her alma mater in the role of proud alumnus of that school. In order to preserve the non-candidate nature of the appearance, organizations should take care to ensure that neither the candidate nor any representatives of the organization make reference to the candidacy or the election, both in the pre-appearance publicity and at the appearance itself. The IRS has also indicated that no campaign activity should occur in connection with the appearance, and that the organization should strive to maintain a nonpartisan atmosphere.

Other examples of non-candidate appearances include inviting a candidate to speak because he or she is considered an expert in a particular academic field or because he or she is a celebrity for a non-political reason. For instance, a gubernatorial candidate who had a former career as a professional baseball player could speak in a non-candidate capacity at an event sponsored by a 501(c)(3) organization focused on youth sports programs. As long as the organization and the candidate did not mention the candidacy or the election either before or during the event, such an event would not constitute political intervention, even if every single person in the room was otherwise aware of the candidacy.

Interestingly, the IRS has also indicated that a candidate may be invited to speak in his official capacity as a current or former political office-holder. Obviously, the line between speech in an official political capacity and campaign speech is very fine, and 501(c)(3) organizations should seek legal counsel before inviting a political candidate to speak about his current political position or in his official capacity. Moreover, the non-campaign exception is not intended as a means of getting around the prohibition on campaign intervention. The 501(c)(3) organization must have a legitimate reason that is not campaign-related for inviting the candidate to appear.

## Conclusion

There are many logistical factors that officers and directors of 501(c)(3) organizations should consider before inviting a candidate to speak at a function sponsored by the organization. However, allowing political candidates to appear at various events, whether in a candidate or non-candidate capacity, can provide a valuable service to the constituents of a 501(c)(3) organization. With a dose of caution and the right counsel, any 501(c)(3) organization can take advantage of these opportunities.

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