

Political Electioneering on Campus

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INTRODUCTION

With the political campaign season of 2012 now in full swing, many college and university campuses have already been affected by this year's unpredictable presidential primaries. Political activities on campus will continue to heat up until Election Day in November and will be magnified by state and local election campaigns occurring across the country.

The combination of an engaged faculty, idealistic and galvanized students and passionately contested issues can transform normally quiet campuses into hotbeds of political activity. But as tax-exempt 501(c)(3) organizations, colleges and universities must abide by specific rules concerning the political activity they permit on campus and the political activity engaged in by administrators, faculty and staff. These rules also apply to any affiliated 501(c)(3)s connected with public institutions and as a standard of behavior for public institutions that are not 501(c)(3) entities.

On Jan. 21, 2010, the U.S. Supreme Court issued a landmark decision in *Citizens United v. Federal Election Commission* that created a dramatic impact on the level of spending for political activities by business corporations, nonprofit 501(c)(4) social welfare organizations, 501(c)(5) labor organizations and 501(c)(6) trade associations. The Supreme Court struck down the Bipartisan Campaign Reform Act of 2002 (BCRA) prohibition regarding the use of corporate funds for "independent expenditures," the express advocacy and the election or defeat of federal, state or local candidates or their equivalents. We have seen the rise of "Super PACS" and issue-oriented organizations soliciting large amounts of money to enter this year's presidential primaries and campaign.

Nonprofit corporations, including labor organizations, trade associations and grassroots issue organizations, will now be permitted under the federal election laws to spend corporate treasury funds to finance public communications that support or oppose federal candidates for public office, so long as such expenditures are not coordinated with either the candidate or a political party.

Also before *Citizens United*, BCRA had prohibited corporate and union treasuries from funding broadcast advertisements known as *electioneering communications* that mention clearly identified federal candidates (but not necessarily calling for their election or defeat) within 60 days of a general election or 30 days of a primary election. As a result, corporations that wanted to air at least some messages referring to federal candidates during periods preceding elections either had to establish a PAC to receive voluntary contributions to fund the ads or forgo the advertising altogether. Now, however, corporations and unions appear to be free to fund electioneering communications from their treasuries at any time.

However, this decision overruled only an election law restriction on political speech under 2 U.S.C. § 441(b) of the BCRA; but it did not cover the Internal Revenue Code (IRC) disallowance of business deductions for political purposes under IRC § 162(e), or the prohibitions and restrictions against political expenditures by § 501(c)(3) organizations and other § 501(c) organizations that could jeopardize their tax-exempt status.

I. POLITICAL ACTIVITIES AND SECTION 501(c) TAX EXEMPTION

A. Section 501(c)(3)

Section 501(c)(3) of the Internal Revenue Code (IRC) precludes exemption of an organization that participates or intervenes in any political activity on behalf of or in opposition to any candidate for elective public office. See § 1.501(c)(3)-1(c)(3)(ii) of the Treasury regulations. This is an absolute prohibition. Section 1.501(c)(1)-1(c)(3)(iii). Periodically legislation has been introduced to lessen this strict restriction or limit its effect on religious organizations. Intervention can also include the publication or distribution of written or printed statements on behalf of or in opposition to a candidate. See Rev. Rul. 2007-41, 2007-25 I.R.B. and FS-2006-17, February 2006 (IRS publications regarding political intervention activities). <http://www.irs.gov>. These helpful guidelines will be disclosed in this paper.

State colleges and universities are exempt from federal income tax because they are instrumentalities of the state and exempt from tax under § 115 of the Code. However, many have also applied for exemption under § 501(c)(3). Thus, the prohibition against political activity would apply to them if they sought and obtained 501(c)(3) status. State colleges and universities are also subject to certain state laws regarding intervention in political campaigns. Private colleges and universities are tax exempt under the provisions of § 501(c)(3). As a general rule, colleges and universities have wider latitude as to the types of political activities in which they can engage so long as they can show a reasonable relationship between the activities and their educational mission.

There are a number of definitional issues in applying the IRS prohibition.

1. **Who is candidate?** A candidate is an individual who offers himself or is proposed by others as a candidate for an elective public office, whether a national, state or local office. The definition includes a person who has either declared or is an incumbent who may by presumption be treated as a candidate until they announce an intention not to run. "Proposed by others" includes individuals who have not declared their nomination but who have formed an exploratory committee or a committee to "test the waters." The IRS does not follow the FEC rule regarding the receipt or expenditures of \$5,000 or more; rather the IRS applies a facts and circumstances test.
2. **What is an "intervention in a political campaign?"** Under the IRS rules, intervention includes the "publishing or distribution of written or printed statements or the making of oral statements on behalf or in opposition to a candidate." Intervention can be motivated by an educational purpose such as the ranking of candidates who support the organization's mission. However, the motivation is irrelevant as to whether it is a political activity; ranking shows preference to one candidate over another.
3. **Endorsement** of a candidate can come from related entities such as subsidiaries that are controlled by the college and university or are affiliated with it, such as a research institute, supporting foundation, medical facility, alumni associations and student organizations. The political problem lies in the control over the activity exercised by the educational institutions.

4. **Attribution** of political activities by faculty, students, university officials and board members can be an issue for the educational institution.

B. Permitted Activities as Distinguished From Electioneering

1. Get-out-the-vote campaigns, Voter Education and Registration

Voter education, registration and get-out-the-vote campaigns all must be nonpartisan. A nonpartisan program is one that does not result in supporting or opposing a candidate, but only attempts to educate the public and encourage them to vote. See LTR 954044 (women voters in minority communities); LTR 9223050 (homeless); LTR 8822080 (low voter participation); and LTR 8822056 (poor, minority and immigrant groups).

a. Voter registration activities

Identification of unregistered voters during an election campaign is a permissible activity. The organization may target specific voters who are unrepresented or historically have not voted. A charity must not make its choices with a view of affecting the outcome of a particular election. The selection should be based on neutral and nonpartisan selection criteria arising naturally out of the charity's charitable purpose. There are special rules for student residency and voter registration activity at Virginia and North Carolina colleges and universities. See Attachment A.

b. Nonpartisan activities

Situation 1, a student organization *B* that promotes community involvement sets up a booth on the campus of University *A* where students 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 that allow registrants to select a party affiliation. *B* is not engaged in political campaign intervention when it operates this voter registration booth. See Rev. Rul. 2007-41C.B. 1421.

(1) Impermissible activities

- (a) Picking sites in cooperation with an election campaign.
- (b) Picking sites based on candidates where activity is undertaken to defeat candidates who have expressed views contrary to those of the organization.
- (c) Picking sites because a particular candidate belongs to the group.
- (d) Zeroing in on candidates in swing states.

(2) Private foundation grants for voter registration drives

- (a) Section 4945(f) allows foundation grants to public charities specifically earmarked for voter registration if:
 - grant is paid to a § 501(c)(3) organization;

- grant supports nonpartisan activities not confined to one election period and carried on in five or more states;
- substantially all of the income is expended directly for the active conduct of voter registration;
- not more than 25 percent of the support for the activity comes from any one private foundation; and
- donated funds are not restricted for use in any particular political subdivision.

c. Partisan activities

Activities evidencing a preference or opposition to a candidate, a political party or candidates who have taken particular positions will not qualify as nonpartisan. IRS will look to a program's *substance* and not its *form* under a facts and circumstances test.

(1) Examples:

- (a) The practice of rating candidates and of publishing the ratings for elective office is a political activity. *Association of the Bar of the City of New York v. Commissioner*, 62 AFTR 2d 88-625, 858 F.2d 876 880 (2nd Cir. 1988), *cert. denied*, 490 U.S. 1030 (1989).
- (b) Rev. Rul. 78-248, 1978-1, C.B. 154. The IRS described four situations in which the compilations of voting records and questions were either political or nonpartisan activities.
- (c) Rev. Rul. 80-282, 1980-2 C.B. 178, amplifying Rev. Rul. 78-248, described factors that led the IRS to the conclusion that the distribution of voting records was not a political activity because voting records were distributed to a limited group rather than as a mass distribution and such distribution was not timed to coincide with a particular election.
- (d) Prohibited activities:
 - Making contributions to candidates or parties, including "in kind" contributions of services, publicity, advertising and paid staff time and use of facilities (xeroxing, postage meter, etc.).
 - Establishing a segregated fund for political expenditures or managing a PAC.
 - Evaluating candidates or their positions.
 - Coordinating activities with a candidate. See GCM 39811, where the organization urged members to attend party caucuses and to vote for anti-choice candidates.
- (e) The IRS has found and the Tax Court agreed that a "secondary private benefit" to a political party may occur even if the activity itself was educational. See *American Campaign Academy*, 92 T.C. 1053 (1989),

where a training school for campaign staff workers was denied exemption under § 501(c)(3) because it benefited the Republican party.

2. Use of College and University Facilities and Services

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.

Examples from IRS Rev. Rul. 2007-41

Situation 17. Museum *K* is a § 501(c)(3) organization (affiliated with a public university). It owns a 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.

Situation 18. Theater *L* is a § 501(c)(3) organization (affiliated with a private university). It maintains a mailing list of all 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.

3. Websites & Blogs

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

A website is a form of communication. If an organization posts something on its website 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 website, 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 website, whether all candidates are represented, any exempt purpose served by offering the link, and the directness of the links between the organization's website and the web page that contains material favoring or opposing a candidate for public office.

Situation 19. *M*, a nonpartisan student political club, maintains a website linked to a university home page 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 website. The links to the candidate websites 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. See Rev. Rul. 2007-41.

Situation 20. Hospital *N*, affiliated with a university, maintains a website 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 website, Hospital *N* describes its treatment program for a particular disease. At the end of the page, it includes a section of links to other websites 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 website of *O*, a major national newspaper, praising Hospital *N*'s treatment program for the disease. The page containing the article on *O*'s website contains no reference to any candidate or election and has no direct links to candidate or election information. Elsewhere on *O*'s website, 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 website because the link is provided for the exempt purpose of 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 website to the endorsement on *O*'s website indicate that Hospital *N* was favoring or opposing any candidate. See Rev. Rule 2007-41.

Care must be taken in establishing links to another website because the college or university is responsible for the consequences of the link even if it does not control the content of the linked site.

The IRS will apply a facts and circumstances test to determine whether a particular link to a candidate's website constitutes electoral activity. Questions to resolve:

- a. Are all candidates treated equally?
- b. Is there a tax-exempt purpose served by the links?
- c. Directness of the link to institution's website
- d. Our blogs linked to institution's website governed by the same rules as websites of affiliated organizations

4. Discussion of Issues v. Electioneering

- a. **General rule: a charity can focus on the issues in structuring voter registration and get-out-the-vote campaigns.** The charity can continue normal public education programs during election periods even if the issues are controversial or policy issues of concern to the voting public. See Attachment B.

Example: Student organization has taken positions on the health issues facing women including controversial and policy issues involving the individual mandate, insurance coverage for abortions and contraceptive devices. These issues have become part of a candidate's platform. The organization can continue to discuss these issues during the campaign without promoting or rejecting specific candidates based on their viewpoints.

- b. **Caution** — the focus must be on promoting the charity's viewpoint on those issues and not promoting the candidates' views. See LTR. 9609007.
 - (1) Issue education can become partisan even without mentioning a candidate by name. See Rev. Rul. 80-282 1980-2C.B. 178 holding that issue advocacy is permissible.
 - (2) Narrow-issue organizations, e.g., parental consent on an abortion law for minors or state-mandated tests, could have a more difficult time establishing permissible advocacy than a "women's issues" organization. Because of the broad range of potential issues that apply to women's health, they are less identified with a particular candidate. The single-issue organization's safest course of action during the final stage of a political campaign may be to refrain altogether from mass-media voter advertisements.
 - (3) Candidate forums are a permissible vehicle to produce public debate, as long as a bias or preference is not shown to any specified candidate. See Rev. Rul. 66-256, 1966-2 C.B. 210; Rev. Rul. 86-95, 1986-2 C.B. 73. The following rules should be observed:
 - (a) The sponsoring organization should have a record of concern with public and legislative matters.
 - (b) All viable candidates should be invited.

- (c) The choice of forum should be based on nonpolitical considerations.
- (d) A broad range of issues should be discussed.
- (e) Questions should be prepared and presented by a nonpartisan panel of knowledgeable persons.
- (f) Each candidate must be given an equal opportunity to present his or her views.
- (g) Questioning must not be biased.
- (h) The forum must be run by a nonpartisan moderator.
- (i) The moderator must state at the beginning and the end of the program that the views expressed are those of the speaker and not the sponsoring charity.
- (j) The moderator should state that all candidates have been invited.
- (k) The organization can report on what happened at the forum without any editorial comments.

5. Individual Activity by College and University Officials, Employees and Students

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

Examples from Rev. Rul. 2007-41:

Situation 4. President *A* is the chief executive officer of Hospital *J*, a university hospital, 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* or the university.

Situation 3. President *B* is the president of University *K*, a § 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. However, 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*.

6. Candidate Appearances

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).
- Whether any political fundraising occurs.
- Whether the candidate's 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 an issue that they cover independently of the timing of any election.
- Whether the timing of the communication and identification of the candidate are related to a nonelectoral event such as a scheduled vote on specific legislation by an officeholder who also happens to be a candidate for public office.

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.

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.
- Whether a moderator comments on the questions or otherwise implies approval or disapproval of the candidates.

Examples in Rev. Rul 2007-41.

Situation 7. President *E* is the president of Society *N*, a historical society that is a § 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.

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.

7. 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 political fundraising or literature distribution of a political nature is conducted by the speaker's staff.

Example. President Obama is asked to address graduates of University X at a commencement. No efforts are made by the president's staff to solicit campaign funds or distribute political literature. The address takes place four months prior to the presidential election. This is not considered a political activity even though his speech may concern issues raised in the campaign.

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.

Examples cited in Rev. Rul. 2007-41.

Situation 14. University *O*, a § 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." 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.

Situation 15. Organization *R*, a § 501(c)(3) public university 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 underfunded. 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 underfunded 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 the previous year of an income tax hike that would have increased 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*.

II. GENERAL RULES

A. Educational Courses and Student Release Programs

- a. Course credit for participation in political campaigns is permissible if:
 - (1) Institution retains no control over the selection of either the candidate or the campaign.
 - (2) Course should be elective.
 - (3) Course curriculum delineates how participation furthers educational goals. See Rev. Rul. 72-512, 1972 C.B. 246.

B. Campus Student Newspapers, Radio and TV Stations and Other Media

- (1) Student newspapers can publish editorials, cartoons and endorsements of political candidates if:
 - (a) The newspaper clearly publishes a disclaimer that views are those of the student and not the institution.
 - (b) Neither the administration nor the faculty exercise any control over the newspaper content. See Rev. Rul. 72-513, 1972-2 C.B. 246.
 - (c) Political candidate advertisement space is available to all candidates at Fair Market Value.
- (2) Student radio and television stations.

Similar rules that apply to student newspapers will apply to radio and television stations.

C. University Publications

- (1) Must be nonpartisan and not show any preference for a specific candidate.
- (2) Examples of nonpartisan activities:

Private University *X* is a § 501(c)(3) organization. *X* publishes an alumni newsletter on a regular basis. Individual alumni are invited to send in updates about themselves, which are printed in each edition of the newsletter. After receiving an update letter from Alumnus *Q*, *X* prints the following: "Alumnus *Q*, class of 'XX, is running for mayor of Metropolis." The newsletter does not contain any reference to this election or to Alumnus *Q*'s candidacy other than this statement of fact. University *X* has not intervened in a political campaign. See Situation 12 of Rev. Rul. 2007-41.

D. Voting Records of Candidates

1. **Permissible activity:** Circulation of questionnaires to candidates and the tabulation and dissemination of the results are not electioneering as long as the questionnaire is unbiased and covers a wide range of issues. Rev. Rul. 78-248, 1978-1 C.B. 154; Rev. Rul. 80-282, 1980-2 C.B. 178; GCM 38444; and GCM 38137.
2. Nonpartisan guidelines that should be followed:
 - a. Voting records of all incumbents who represent the region should be included.
 - b. The report should not identify legislation with candidates for re-election.
 - c. Voting records should not be limited to any election campaign.
 - d. Voting analysis should cover a broad range of issues.
 - e. **A voting record must be presented in such a manner that it does not imply approval or disapproval of a candidate.** Designations “+” or “-” may, however, be used to show whether each candidate agrees or disagrees with the organization’s views on the issue if:
 - the organization has tracked the legislative record for an extended period, and
 - distribution of voting records is limited to a small number of individuals.

E. Public Opinion Polls

1. **General Rule:** Institution is free to continue taking public opinion polls during an election campaign if:
 - a. The polls are found to be fair and neutral.
 - b. Institution uses accepted scientific polling techniques.
 - c. Questions do not directly or indirectly concern the records or positions of particular candidates or parties.

F. Release of Staff to Work on Political Campaigns and Provide Office and Other Services

1. **General Rule:** Staff can work on their own time and not act in any official capacity representing the charity. The charity cannot without reimbursement provide office space, clerical support, supplies, etc., to political candidate or party.
 - a. University officials, faculty, students or student organizations can participate in political campaign but must do so in an individual capacity:
 - (1) Employees and officials must not engage in campaign activities during normal working hours.
 - (2) They cannot use institution letterhead, supplies or facilities without reimbursement and prior approval.
 - (3) Institution officials should follow these rules:

- (a) Speak as an individual and not on behalf of the institution. Indicate at the beginning and end of any remarks that the remarks are those of the individual and do not necessarily represent the views of the institution.
- (b) Only sign off on a political advertisement or appear at a candidate function in an individual capacity.
- (c) Institution's name can only be used for identifying purposes, i.e., the individual's title.
- (d) Do not use the institution's media to express a personal preference for one candidate over another.

III. IRS ENFORCEMENT

A. Revocation of Tax Exemption

1. The IRS has the authority to revoke the § 501(c)(3) tax-exempt status of a college or university that has participated or intervened in (including publishing or distributing statements) any political campaign on behalf of (or in opposition to) any candidate for public office.
2. The IRS has conducted several "political activities compliance initiatives" (PACIs). The IRS found that in nearly three-quarters of the cases reviewed, improper political intervention by § 501(c)(3) organizations was found. See <http://www.irs.gov/charity>. The IRS has yet to release its current report for 2008.
3. The IRS has reviewed the operations of 500 colleges and universities under its current examination program. We are awaiting the results of these audits. While there is no reported case of a college or university revocation for participation or intervening in a political campaign, there are other measures open to the IRS in the form of assessments of penalties or injunctions applied to prohibited political activities. Many of these are unreported because the matters are settled with the IRS.

B. Excise Tax Liability

In 1987 Congress amended the Internal Revenue Code to add a new provision: § 4955, 26 U.S.C. § 4955, applicable to § 501(c)(3) organizations, authorizing imposition of an excise tax on political expenditures made by the tax-exempt organization. The excise tax is imposed in two "levels." The initial tax and a second-level tax can be assessed against both the organization itself and an organization manager who knowingly and willfully agrees to the political expenditure. See Reg. § 53.4955-1(b).

1. On the Organization

If the IRS determines that a college or university has made a prohibited political expenditure, under § 4955(a)(1) the IRS can assess a penalty equal to 10 percent of the amount of the expenditure. The tax on organizations is not subject to any statutory or regulatory limit.

In any case in which an initial tax is imposed by subsection 4955-1(a)(1) on a political expenditure and such expenditure is not corrected within the taxable period, the IRS imposes a second-level tax equal to 100 percent of the amount of the expenditure. See § 4955(b)(1)

- a. The IRS has not established any rules for correction of these transactions. Correction generally means recovering the expenditure to the extent possible *and establishing safeguards to prevent future political expenditures*. See Reg. § 53.4955-1(e) for further discussion and Judith Kindell & John Reilly, *Election Year Issues*, FY 2002 IRS Exempt Organizations Technical Instruction Program 363 (August 2001), <http://www.irs.gov/pub/irs-tege/eotopici02.pdf>.

2. On the Organization Managers

- a. Under § 4955 (f)(2) an organization means any officer, director or trustee of the organization, including any employee of the organization having authority or responsibility with respect to such expenditure. This is a joint and severable liability on each manager who knowingly and willfully engages in the transaction. The tax would be levied against every officer, trustee and administrator who exercised responsibility for making or approving such expenditure.
- b. If the IRS determines that an organization manager willfully agreed to the making of a taxable expenditure, then under § 4955(a)(2) the organization manager is assessed a penalty of 2.5 percent of the amount of the expenditure. The penalty must be paid by the organization manager individually and not by the institution.

If the organization manager refuses to agree to any part or all of the correction, then under § 4955(b)(2) the IRS can assess a second-level penalty equal to 50 percent of the amount of the unlawful political expenditure. However, there is a statutory limit on the amounts that can be assessed against an organization manager: \$5,000 per violation for first-tier penalties and \$10,000 per violation for second-level penalties. The Code prohibits the levying of excise tax penalties against an organization manager unless a tax is also assessed against the organization itself.

Safe Harbor Reliance on Counsel: An organization manager may rely on the advice of counsel. See Reg. 53.4955-1(b)(7). An organization manager's agreement to an expenditure is ordinarily considered not knowing or willful and is ordinarily considered due to reasonable cause if the manager, after full disclosure of the factual situation to legal counsel, relies on the advice of counsel expressed in a reasoned written legal opinion that an expenditure is not a political expenditure under IRC 4955 (or that expenditures conforming to certain guidelines are not political expenditures). <http://www.irs.gov/pub/irs-tege/eotopici02.pdf>.

- c. **Flagrant Political Expenditures.** The IRS has the authority to impose or to penalize an organization that has flagrantly violated the political campaign prohibition if it determines immediately to impose excise taxes and demand payment from the organization. Under § 7409, the IRS may also apply to a court for injunctive relief to prevent further political activity. See § 7409 of the Code.
- d. **Abatement of Tax.** No initial first-level tax will be imposed if the expenditure was notwithstanding and flagrant.

Attachment A

Student Campus Registration and Residency Requirements.

1. Virginia

- a. **Registration** – 22 days before the election a person can register to vote and vote in a primary election if person will be 18 years old in the next general election.

- b. **Residency**

At School. It may be difficult for students attending school in Virginia to establish residency for voting purposes at their school address. The state has one of the strictest residency requirements in the country. In order to establish residency, the Virginia’s constitution and election laws require that the state be both your “domicile,” meaning that you intend to reside and remain in Virginia, and your “place of abode,” meaning the physical place where you live. Virginia’s Supreme Court has interpreted these requirements to mean that you must intend to remain at your address for an “unlimited time” in order to establish voting residency. The Virginia Supreme Court and the Virginia Attorney General have also declared that being a college student “should be treated as a ‘neutral’ factor” in determining residency. However, local election officials have a great deal of discretion in determining residency for students attempting to register at their school addresses in Virginia. Areas in the law have led to ambiguity on what standard election registrars should apply to student’s intent to make the college residency a permanent residence. In 2009, the State Board of Elections sought to ease the ambiguity and differences across local precincts by declaring that a dorm or college residence does not disqualify you from registering.

2. North Carolina

- a. **Registration** deadline is 25 days before Election Day. Early voting and same day registration under “one stop absentee voting” is permitted during a period 19 days to 3 days before the general election. There is a preregistration procedure that allows 16-year-old individuals to register and then automatically registers them when they reach 18 years old. They can vote in a primary if they become 18 by the next general election.

- b. **Residency**

At School. Students attending school in North Carolina should be able to register and vote at their school address if they meet the following requirements. North Carolina law clearly states that if you intend to make your school community your home during the time you are in school, and have no intent to move back to the address where you lived before attending school, you can claim your school community as your residence and use that address to register to vote. You do not have to intend to stay in North Carolina after graduation or have any definite plans, as long as you do not intend to return to your former home.*

* The above analysis comes from the student voter guide prepared by the Brennan Center for Justice at NYU Law School, New York, NY 10013.

Attachment B

Policy on Partisan Political Activity

Columbia University, as a tax-exempt organization under Section 501(c)(3) of the Internal Revenue Code, is prohibited from participating or intervening in any political campaign on behalf of or in opposition to any candidate for public office. Political intervention includes not only making financial contributions but also the publication or distribution of written or oral statements on behalf of or in opposition to a particular candidate. There are no exceptions to this prohibition. Even an insubstantial violation may lead to monetary fines and exposes the University to the possibility of revocation of its tax-exempt status.

Nonetheless, the University is dedicated to the free expression of ideas. It encourages students, faculty, and other employees, in their individual capacities, to participate fully in the political process during campaigns by candidates for public office as long as they do not — either overtly or implicitly — involve the University.

In order to permit the most robust political discourse during partisan political campaigns for public office, while at the same time ensuring Columbia's compliance with the restrictions placed on the University as a tax-exempt organization, the University issued a Statement of Columbia University Policies and Practices on Campus Political Activities in 1970. That policy remains in effect today and prohibits all individuals and groups within the University community from using University resources or the University's name in connection with partisan political campaign activities.

Thus, in accordance with both the law and stated University policy, everyone connected with the University must observe the following rules with respect to his or her participation in national, state, or local partisan political campaign activities:

1. When endorsing or opposing a candidate for political office or taking a position on an issue for the purpose of assisting or opposing a candidate, individuals and groups within Columbia University should undertake to make it clear that they are speaking only for themselves and that they are not stating a University position. This is particularly important for those who in their official capacity frequently speak for the University.
2. Faculty and other employees may take part in partisan political activities freely on their own time, but they must not do so at the expense of their regular responsibilities to the University and its students.
3. Columbia University's name or insignia cannot be used on stationery or other documents intended for political purposes, including soliciting funds for political support or carrying on a political campaign.
4. Funds or other contributions may not be solicited in the name of Columbia University for political support or carrying on a political campaign.
5. Columbia employees may not — and should not be asked to — perform tasks related to partisan political activities during working hours.
6. The following may not under any circumstances be used for political campaign purposes:
 - a. The University's bulk-mailing privilege;

- b. University mailing lists — including the addresses and e-mail addresses of departmental offices or the offices of faculty or other employees;
 - c. University-provided office supplies, telephones, facsimile machines, copiers, etc.;
 - d. The University's sales tax exemption for purchases of goods and services.
7. Any communication disseminated through the Columbia e-mail system that could be construed as relating to political activity must include a clear statement that such communication represents the personal position of the author.
 8. University-related organizations composed solely of members of the corporate University community and its educational affiliates may utilize available University building space (University facilities regularly reserved for student use and other University space such as lecture halls and meeting rooms) to engage in partisan political campaign activities within the University community,* provided that such organizations (i) pay for the costs of such activities (typically, telephones, duplicating, electricity, etc.) and (ii) pay full rental fees for the use of such facilities that they would otherwise be charged. A disclaimer should be made at the beginning of any such event (and in any printed materials or advertising) that the University does not support or oppose candidates for political office, that the opinions expressed are not those of the University, and that the University-related organization has sponsored the event. All plans, publicity, and other information relating to such activities must be approved in advance by the appropriate student affairs office and the General Counsel's Office. The Office of the Director of Government Relations and Policy Coordination is available to consult with Columbia affiliates about such activities. The University's outdoor grounds may not be used for partisan political events.
 9. Organizations that are composed of non-University members, participants or employees, in whole or in part, are ineligible for use of University space to engage in partisan political campaign activities.
 10. Certain nonpartisan political activities (such as properly organized voter registration activities, voter education programs, and candidate debates) may be permissible if they do not evidence a preference for or opposition to a political party or to candidates who have taken a particular position. In order to ensure that all legal and University requirements are followed, advance approval for these events must be obtained from (and all materials must be reviewed by) both the appropriate student affairs office and the General Counsel's Office, which will, if necessary, provide further guidance to the organizer. The Office of the Director of Government Relations and Policy Coordination is available to consult with Columbia affiliates about such activities. In addition, an announcement should be made at the beginning of each such event and in any written materials setting forth the disclaimer described in paragraph 8 above.

As noted above, these policies are not intended to infringe in any way your individual right to support a particular candidate or participate in a political campaign. You remain entirely free to become involved in the election process as you choose, so long as you do so in a way that does not — either overtly or impliedly — involve the University.

Your cooperation in this matter is both necessary and appreciated. If you have any questions, please contact:

- Loftin Flowers, Director of Government Relations and Policy Coordination, 212-854-3738, llf2105@columbia.edu
- Howard A. Jacobson, Deputy General Counsel, 212-854-5583, haj@gc.columbia.edu

At the Columbia University Medical Center:

- Ross A. Frommer, Deputy Vice President, 212-305-4967, raf2002@columbia.edu

* Note, however, that when such University-related organizations engage in partisan political campaign activities aimed outside the University community, they may not utilize University space for such activities, but instead must conduct all such activities off campus.

Partisan Political Campaign Events on Campus

When a University-related organization composed solely of members of the corporate University community and Columbia educational affiliates sponsors a partisan political campaign event, there are a number of considerations to keep in mind:

1. All plans, publicity, and other information must be approved in advance by the appropriate student affairs office and the General Counsel's Office. The Director of Government Relations and Policy Coordination is available to consult with Columbia affiliates about such events.
2. The University-related group selects the indoor University venue, based upon availability and size of expected audience.
3. No campaign rallies, campaign banners, campaign literature or button distribution, or fund-raising are allowed.
4. A disclaimer must be included in all written materials and advertising (including phonemail) and announced at the beginning of all events: "Columbia University does not support or oppose any political candidates. The views expressed are those of [the candidate or other partisan political speaker] only. The [Columbia-related group] is sponsoring this event."
5. Columbia University IDs are required for attendance.
6. Columbia University or school banners may not be displayed; University-related group banners may be.

8/2011