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## Can a 501(c)(3) Host a Political Candidates' Debate?

**Legal Update**

09.26.2016

By Jessica D. Manivasager

The short answer is "yes." Whether you are inspired by this year's U.S. presidential debates or otherwise to host your own debate, a 501(c)(3) can engage in various election-related activities, so long as the 501(c)(3) follows certain rules so as not to jeopardize its tax-exempt status.

While nonprofit organizations that qualify as tax exempt under Internal Revenue Code Section 501(c)(3), or "501(c)(3)s," are forbidden from participating or intervening in any political campaign on behalf of (or in opposition to) any candidate for public office, 501(c)(3)s can participate in certain types of electioneering. The key to allowable election-related activities by a 501(c)(3) is that the activities are **unbiased and non-partisan**. It is important to note that whether an activity is prohibited campaign intervention depends on the facts and circumstances surrounding the activity, and that some impermissible biases can be subtle – for example, it is not necessary to mention a candidate by name for bias to exist. Note also that certain additional restrictions may apply if a 501(c)(3) is a private foundation. Therefore, it is a best practice to consult with legal counsel prior to engaging in these activities.

Here are some examples of permissible electioneering activities by 501(c)(3)s:

- **501(c)(3)s Conducting Debates.** 501(c)(3)s may conduct unbiased and nonpartisan public forums where candidates speak or debate. Some of the factors that show that the forum is unbiased and non-partisan: (1) all legally qualified candidates are invited; (2) the topics and questions cover a broad range of issues of interest to the public, not just those important to the 501(c)(3); (3) consider having questions for the candidates prepared and presented by an independent nonpartisan panel; (4) all candidates are given an equal opportunity to present his or her view on each of the issues discussed; and (5) the moderator remains impartial and does not comment on the questions or imply approval or disapproval of the candidates.
- **Candidate Appearances at 501(c)(3) Events.** Depending on the facts and circumstances, a 501(c)(3) may invite political candidates to appear or speak at its events without jeopardizing its tax-exempt status. Factors that may indicate

the event was permissible: (1) the 501(c)(3) provided an equal opportunity to participate to political candidates seeking the same office; (2) the 501(c)(3) did not indicate any support for or opposition to a candidate (including candidate introductions and communications concerning a candidate's attendance); and (3) no political fundraising occurred at the event. Candidates may also appear or speak at a 501(c)(3)'s 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 currently holds, or formerly held, public office; is considered an expert in a non-political field; or is a celebrity or has led a distinguished military, legal, or public service career. Factors that indicate that the individual was chosen to speak solely for non-candidacy reasons include whether the individual only spoke in his or her non-candidate capacity, whether any reference to the upcoming election or the individual's candidacy was made, and whether any campaign activity occurred in connection with the individual's attendance. The 501(c)(3) should clearly indicate the capacity in which the candidate is appearing and should not mention the individual's political candidacy or the upcoming election in the communications announcing the candidate's attendance at the event.

- **Issue Advocacy by 501(c)(3)s.** 501(c)(3)s may take positions on public policy issues, including issues that divide candidates in an election for public office. However, 501(c)(3)s must avoid any issue advocacy that functions as political campaign intervention – each communication must be considered in context before arriving at any conclusions. Some of the factors that indicate an issue advocacy communication is not campaign intervention include: (1) the communication does not identify any candidates for a given public office, whether by name or other means, such as party affiliation or distinctive features of a candidate's platform; (2) the communication does not express approval or disapproval for one or more candidates' positions and/or actions; (3) the communication is not delivered close in time to an election (or, if it is close in time, the communication is part of an ongoing series by the organization on the same issue and the series is not timed to an election); (4) the identification of the candidate and the communication's timing are related to a non-electoral event (e. g., a scheduled vote on legislation by an officeholder who also happens to be a candidate for public office); (5) the communication does not refer to voting or an election; and (6) the issue addressed in the communication has not been raised as an issue distinguishing the candidates.
- **501(c)(3)s Conducting Voter Education, Registration and “Get-Out-The-Vote” Drives.** 501(c)(3)s are permitted to conduct certain voter education activities, so long as no preference for any candidate or party is indicated or implied. Factors indicating that these activities are not biased include: (1) candidates are named or depicted on an equal basis, or not named at all, and only official voter registration forms mention party affiliation in relation to voter registration; (2) if political parties are named, they are named only for purposes of identifying the party affiliation of each candidate; (3) the activity is limited to urging individuals to register and vote and to describing the time and place for these activities, and communications are not issue-focused; (4) all services are made available without regard to the voter's political preference; and (5) communications to any potential registrant or registered voter in the drive do

not differ depending on answers given by the registrant or registered voter.

- **Activities of Those Individuals Involved with a 501(c)(3).** The prohibition on 501(c)(3)s from engaging in political activity is not intended to restrict free expression on political matters by its leaders, members, managers and directors speaking for themselves, as private individuals. Likewise, such individuals also are not prohibited from speaking about important issues of public policy. However, such individuals cannot make partisan comments in a 501(c)(3)'s publications (even if the individual pays for the statement in the publication) or at the 501(c)(3)'s functions. There should be no intimation that an individual's views represent those of the 501(c)(3) (and if asked, the individual should affirmatively deny that they do). The individual should decide against wearing insignia of the 501(c)(3) when they participate in political activities in their private capacity.