

Nonpartisan Election Activities: A Legal Explanation

The Rev Douglas Worthington
All Souls', Point Loma

A disclaimer (of course!)

- No longer a licensed or practicing attorney
- Content does not constitute legal advice
- Consult a licensed attorney for specific questions and what-ifs

What is a 501(c)(3), anyway?

- Organized and operated exclusively for religious, charitable or educational purposes
- No monies inure to private shareholders or individuals
- Does not ‘lobby’ as a “substantial part” of its activities
- “Does not participate in, or intervene in (including the publishing or distribution of statements), any political campaign on behalf of (or in opposition to) any candidate for public office”

Policy

Lobbying, and its close cousin Education

- **Policy vs Politics**
- Churches may develop positions on public **policy** issues and advocate for them
- But this must be done in a **politically** unbiased way

Politics

First: Absolute no-nos

- Making contributions to a candidate's campaign
- Making a statement of endorsement (or opposition)
 - Even if nonpartisan (e.g., support of Black, Latino or women candidates)
- Providing one candidate a benefit without offering it to their opponent(s)

- Tax-exempt status could be revoked

Getting out **all** of the vote

- Voter **registration** and voter **encouragement** are permitted ... but must be scrupulously unbiased and nonpartisan
- Voter **education** is permitted ... but must be ‘just the facts’

Caution!! Handle candidates with care

- It is permissible to engage with candidates *as* candidates
 - And, in theory, even to engage with a candidate as a non-candidate
- This is *very* tricky ... and most churches are not equipped to do it compliantly and safeguard against all the legal pitfalls
- Ask an **experienced advocacy group** to **partner** with you if you're going to engage candidates directly

Oh, the internet complicates *everything*

- Posts to your own website or social media are the same as spoken or printed statements
- Links to third-party content are tricky

A quick summary

- Churches, as 501(c)(3)s, may **lobby/educate the public on policy positions**
 - Must **not** convey **support** of (or **opposition** to) any candidate
- Efforts to **encourage voting** and **educate voters** are permitted
 - Must be **nonpartisan and unbiased**
- Churches are **absolutely prohibited** from taking actions that **support or oppose**, directly or indirectly, **any candidate** for public office
 - **Cannot endorse or criticize candidates ... or provide** their campaigns **anything of value**
- *Advice:* Do **not interact with candidates** on your own ... **partner** with an expert

Some resources

- [The IRS Compliance Guide for 501\(c\)\(3\) Public Charities](#)
- [The IRS Tax Guide for Churches and Religious Organizations](#)
- [Revenue Ruling 2007-41](#)
 - (21 different examples of what 501(c)(3)s can and cannot do in terms of permitted lobbying/education and illegal political involvement)

THANK YOU!!

Back-up Slides

Who thought this up, and why?

- A lofty objective, or a more earthy one?
- The “Johnson Amendment,” added in 1954
- In any event, a *quid pro quo* that’s stood the test of time