

PLAYING *by the* RULES

Handbook on Voter Participation and
Education Work for
501(c)(3) Organizations
by Caplin & Drysdale



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Playing by the Rules

*Handbook on Voter Participation and
Education Work for 501(c)(3) Organizations*

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Based in Washington, D.C., the Exempt Organizations Group at Caplin & Drysdale, Chartered, advises a wide variety of clients on issues arising from their status as tax-exempt nonprofits. For more information, visit www.caplindrysdale.com.

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How to Use this Handbook

Although organizations exempt from tax under section 501(c)(3) of the tax code must strictly comply with the ban on electioneering, they are permitted to engage in a variety of *nonpartisan* voter education and voter participation projects. Such projects may include public education, advocacy on controversial policy issues, and efforts designed to increase voting by disadvantaged or excluded groups in society.

Playing by the Rules highlights some key issues that face organizations contemplating such work. It explains the general rules that apply in this area and indicates how the general rules operate in concrete situations. Our objective is to help organizations in the dual task of complying with the law in this area, while also understanding the kind of actions they can properly undertake on voter registration, get-out-the-vote (GOTV) and voter education.

This handbook takes a pragmatic, problem-solving approach. Although the general rules in this area are sometimes easy to state in the abstract, they are often hard to apply in practice. Questions often arise in gray areas of the law, where there is no obvious right or wrong answer, and in these cases each organization will have to make a judgment call between a riskier and a safer option.

This handbook concentrates on these problem areas. It provides examples, drawn from actual experience in the field, to illustrate how key principles apply. The materials identify uncertain areas in the law, spotlighting the risk factors and “red flags” that you should know about.

As you use our materials, please bear in mind the selectivity of their focus. They are neither a beginners’ guide nor a comprehensive treatise on the law in this area. They deal with efforts that are consciously focused on voter participation and voter education; they do not address the myriad other issues that an organization with an advocacy agenda needs to be aware of in avoiding improper election-related activity, including ensuring that its comments on public policy issues and the individual activities of its board and staff do not transgress the ban on electioneering. Still less do they deal with compliance with the limits on a section 501(c)(3) organization’s lobbying activity.

Further, these materials concentrate mainly on section 501(c)(3) organizations that qualify as public charities (rather than as more-restricted “private foundations”) with some attention to the special problems created by 501(c)(3)-501(c)(4)-Political Action Committee combinations. Another important limitation—they deal only with tax issues and not with the Federal Election Campaign Act or state election laws, which essentially do not affect 501(c)(3)s because they are prohibited from electioneering.

Finally, while these materials provide clear answers where feasible, it is often possible only to point out the land mines and help you to steer clear of them. The proper course will, in many cases, depend on the particular situation of an organization. In a doubtful case, an organization should therefore consult its own counsel or other tax advisors.

Getting Started

Tax Categories

Section 501(c)(3) organizations

“C3s”) must serve educational or other charitable purposes. Not only are they exempt from tax on their own income, but contributors can deduct gifts to them, and they can receive private foundation grants.

- C3s are absolutely prohibited from “intervening in any political campaign on behalf of (or in opposition to) any candidate for public office.”
- Public charities are C3s with relatively broad public support. They are free of the special restrictions that apply to C3s considered “private foundations.” These materials are, for the most part, concerned only with C3s that qualify as public charities.

Section 501(c)(4) organizations (C4s)

must serve social welfare purposes. They are exempt from tax on their own income, but contributions to them are *not* deductible as charitable gifts, and private foundations can fund them only for work that a C3 can do.

- C4s are permitted by the tax code to

undertake electioneering so long as they obey applicable state and federal election laws and it is not their principal activity.

- Gifts to C4s are subject to federal gift tax.

Political Action Committees (PACs) are special funds set up under section 527 of the tax code mainly for electoral activity. PACs that support federal candidates are subject to the special rules of the Federal Election Campaign Act.

- Gifts to PACs are not subject to the federal gift tax. C4s can maintain affiliated PACs as separate segregated funds that will qualify for exemption from gift tax.

Basic Election-Related Rules for C3s

Under the statutory prohibition on “intervening” in a “political campaign,” a C3:

Cannot

- ✗ Give endorsements to candidates for office—either explicit or implicit.

- ✗ Make contributions to candidates or parties (including “in-kind” contributions, publicity, staff time, use of facilities or assets).
- ✗ Set up, fund, or manage a PAC.
- ✗ Evaluate candidate positions (except in certain circumstances where the evaluation pertains to a candidate’s position on pending legislation that is the subject of lobbying by the organization).
- ✗ Coordinate activities with a campaign.

Can

- ✓ Conduct nonpartisan voter registration and get-out-the-vote (“GOTV”) efforts. (A C3 must follow the special standards of section 4945(f) if it is to be eligible for private foundation funds.)
- ✓ Conduct nonpartisan “candidate forums” on issues of concern to its constituency. The forum must be open to all candidates, be run in a balanced way, and include a nonpartisan panel of questioners.
- ✓ Sell mailing lists to candidates, but only on the same terms as such lists are routinely sold to other customers. (The IRS takes the position that a C3’s income from the sale or rental of mailing lists is subject to unrelated business income tax. However, the IRS has recently been unsuccessful pressing this claim in court. Several cases addressing this issue are currently in litigation.)
- ✓ Make substantive issue-oriented presentations to platform committees, campaign staffs, candidates, media, and the public.

- ✓ Take advantage of the increased attention that policy issues enjoy during an election period to focus public attention on the C3’s issues and agenda.
- ✓ Circulate questionnaires to candidates if they cover a broad range of issues, the questions are unbiased, and the results are distributed only through the C3’s routine channels.
- ✓ Conduct training on issues and organizational skills so long as the training is genuinely nonpartisan.
- ✓ Continue the C3’s normal lobbying activity during election periods, and report on its lobbying and substantive activities (including permitted activities listed above) in the usual way to the usual recipients of its publications.
- ✓ Report to its normal constituency, as part of continuing lobbying, on votes of *all* legislators (not just candidates) on issues of interest to the C3, and indicate whether they supported its position.
- ✓ Allow its staff to participate as individuals in political campaigns, on their own time and not as representatives of the organization.

“Red Flags”

The following are “red flags” that are likely to suggest to the IRS that electioneering may be going on:

- ❓ Appearance of implied endorsement of candidates (or opposition to candidates).
- ❓ Concentration of activities during peak election periods or in geographical areas of special election interest.

? Communications with or distribution of materials beyond the C3's normal audience or focused on particular election districts.

? Coordination of a C3's activities with those of organizations (C4s, PACs, campaigns) having explicit political aims.

Planning an Appropriate Voter Participation Program

A section 501(c)(3) organization wanting to enhance voter participation has many options available to it. It may engage in voter education, voter registration, or GOTV activities, or in some combination of the three.

In planning any voter participation program, the overriding rule is that the C3's activities must be nonpartisan. "Nonpartisan" has a special meaning in the tax code: it means that a C3 cannot "intervene in any political campaign on behalf of (or in opposition to) any candidate for public office." A voter participation program is "nonpartisan" in the IRS's view only if it is designed solely to educate the public about the issues or encourage them to exercise their right to vote—not to tell the public how to vote.

A program generally cannot qualify as nonpartisan if it evidences a preference for or against:

- a particular candidate or candidates, or
- the candidates of a particular political party, or
- candidates or parties who have taken particular positions.

The term "candidates" includes all persons who offer themselves (or are proposed by others) as contestants for

elective public office. Such persons are "candidates" even if they have no organized political campaign and do not have or seek a major party nomination. A person who is proposed by others as a candidate is a "candidate" for tax purposes, even if he or she does nothing to promote the candidacy.

The following examples illustrate the approach the tax law takes to the question of who is a "candidate" for public office:

- A court held that judicial nominees are "candidates" if the offices for which they run are elective as opposed to appointive. Thus, persons being considered for elected state judgeships are "candidates." Persons being considered for federal judgeships or for appointments to the federal executive are not considered "candidates."
- The IRS has taken the position that people who seek election to a "precinct committee" of the Republican or Democratic Party are "candidates for public office." The fact that these positions have no independent policy-making function is irrelevant, according to the IRS. The IRS emphasized that precinct committee candidates appear on the general election ballot, indicating to the average person that the job is a "public office."

The principle of nonpartisanship requires that a voter participation program must not explicitly or implicitly endorse or oppose any candidate or political party. Every

aspect of a C3's program must be scrutinized to ensure that there is no reasonable basis to infer, from the way the program is conducted, any bias or preference in this respect. This means that a C3: (1) cannot endorse candidates; (2) cannot publicize the views, personalities or activities of candidates; (3) cannot publicize candidate endorsements of its positions; and (4) cannot evaluate candidates or "rate" their fitness for public office, no matter how "objective" the rating process is. Charities are also barred from preferring candidates or parties in material ways, e.g., by making cash contributions or by providing in-kind services such as staff time, use of photocopiers, free publicity, or advertising.

Importantly, the prohibition on stating a preference can be violated even if no candidate or party is mentioned by name. An implicit endorsement or condemnation is also a violation. It is no defense that some candidates from both parties could in principle be helped by the C3's activities. Thus, the IRS has ruled that a C3 violated the electioneering prohibition when it convened panels of citizens selected at random, provided them unbiased information about the candidates, and then published the panels' preferences. The tax code says that a C3 must not help any candidate as such, not that it must provide its help in a more or less evenhanded manner.

Indeed, the IRS took the position that a charity may not "intervene" in a political campaign even where no "specific, identifiable candidate" even

exists at the time the charity makes its statement. That case involved a situation where a religious group urged its members: (1) to run for a particular elective office and (2) to vote for any members of the group who chose to run for that office. The IRS said that this was partisan politicking, regardless of whether any member of the group actually heeded the call to seek election.

In assessing whether a C3's voter participation program is "nonpartisan," the IRS will look at the program's substance, not merely at its form. For example, as discussed below, a seemingly nonpartisan message may amount to an implied endorsement because of its timing, the target audience, or the location in which the C3 has chosen to work. It does no good to pepper grant applications and voter communications with words like "nonpartisan" and "educational," unless the program is truly nonpartisan in its actual operation. Similarly, it does no good to segregate "electioneering" and "voter education" activities into nominally separate C4 and C3 entities, if the C3's "educational" activities are so coordinated with the C4's "electioneering" that the operation functions effectively as a unified political effort. The IRS has wide powers to look through formal structures and verbal labels and to insist that the tax result reflect what actually happens in the real world. It is thus essential that a C3's voter education and participation program actually be nonpartisan; it is not sufficient that it merely be structured to seem so on paper.

Stakes and Sanctions

There is sometimes a thin line between *nonpartisan voter participation*, which is permissible C3 activity, and *partisan electioneering*, which is absolutely barred. Because the boundary between “voter participation” and “electioneering” is often fuzzy, it is all too easy, by a series of small steps, to stray over the border unconsciously. Indeed, the very vagueness of the boundary will often create a temptation to skirt along its supposed edges deliberately.

In view of the draconian sanctions that may follow miscalculations, this temptation should be resisted. The bar against political campaign activity by C3 organizations is absolute. Whereas C3s are permitted to engage in a limited amount of lobbying, there is no similar “buffer” of permitted electioneering that a C3 can do without risking its exemption. The IRS takes the position that any amount of partisan political activity, no matter how insignificant, will jeopardize a C3’s tax-exempt status; there is no requirement that the electioneering be “substantial.” Thus, any charity that engages in partisan

political activity, even to a modest degree, risks having its tax exemption revoked by the IRS.

Under legislation enacted in 1987, violation of the ban on political activity, besides risking revocation of a C3’s tax exemption, may also subject a C3 and its managers to penalty taxes and other sanctions. The tax code now imposes a 10% excise tax, payable by the nonprofit, on each “political expenditure” that it makes. The code also imposes a 2% excise tax, payable by the nonprofit’s managers personally, on each “political expenditure” to which they agree knowingly and without reasonable cause. Besides enacting these new penalties, the 1987 legislation gave the IRS potent new enforcement weapons, including the power, by seeking a court injunction, to shut down a C3 organization that engages in flagrant electioneering.

Partisan politicking by C3s is now a high visibility issue that is receiving top-level government attention, both in the IRS and elsewhere. The following events, among others, have intensified the focus:

In January of 1997, the House of

Representatives reprimanded Speaker Newt Gingrich for his role in using C3s to create a television series designed to recruit Republican voters and an academic course that promoted Mr. Gingrich's political message. The

Voter education and registration programs remain entirely proper charitable activity, and the need for these programs is as great as it has ever been. C3s should operate their programs with meticulous care to stay within the rules.

legal issue at the heart of this controversy was whether the activities of the C3s were so closely coordinated with those of Mr. Gingrich's PAC that the C3s operated for political purposes, even though their activities—viewed in isolation—may have been permissible.

Later in the year, the Senate Government Affairs Committee expressed considerable concern about the use of tax-exempt organizations to circumvent the federal election rules. The Committee's concerns focused on a number of widely reported cases involving allegations of tax-exempt organizations coordinating their activities with political parties, using disguised campaign ads to influence the electorate, and enabling donors to avoid disclosing their campaign contributions.

Even if a C3 ultimately prevails over an IRS contention that it engaged in "electioneering," the costs of defending against such an IRS attack can

be substantial. There are numerous gray zones in the law where both the C3 and the IRS may have reasonable arguments. The high cost of getting into such disputes is itself a factor to be considered by a charity that is tempted to go right up to the line.

All of these factors—the penalties enacted in 1987, the high profile of the issue in election years, the pressure on the IRS to beef up its enforcement, and the costs of conducting such programs—do *not* mean that C3s should be deterred from conducting voter education, voter registration, and GOTV drives, or that funders should be deterred from supporting them. To the contrary, such programs remain entirely proper charitable activity, and the need for these programs is as great as it has ever been. Despite the heightened scrutiny, the IRS has continued to rule favorably on truly nonpartisan voter participation programs. But the prospect of tougher IRS enforcement *does* mean that C3s should operate their programs with meticulous care to stay within the rules.

Nonpartisan Focus

Contrary to common impression, the tax laws do *not* prohibit charitable and educational organizations from conducting and financing voter registration drives and other voter education efforts. Their work on such activities—like everything else they do—has to be nonpartisan. It cannot be aimed at helping or hurting particular candidates or parties. And for private foundations, there are modest extra requirements. The basic point is that nonprofits can work on voter registration and other voter education activities and the rules for doing so are quite simple.

The Principle of Nonpartisanship

The main rule is that C3s' voter registration work (whether they conduct the drives directly or provide money for other nonprofits that do) cannot be directed at helping one side or another in an election. That means that the drive must give its registration assistance without inquiring how the recipients plan to vote. It also means that the places in which the drive will operate cannot be chosen for reasons

that relate to the outcome of the election (for example, states in which the outcome might be effected by the drive).

Similarly, nonprofit groups may engage in other nonpartisan voter education activity, such as conducting candidate forums or debates, circulating unbiased and reasonably broad-ranging questionnaires to candidates, and similar activities. In all this work, the key limitation is that the organization not reflect a preference among candidates.

In evaluating whether a C3's activity is nonpartisan, the IRS will look not only to the content of the its message, but also to its choice of audience—both what kind of people it addresses and where they live. The fundamental requirement is that a C3 not make these choices with a view to affecting the outcome of a particular election.

It is important therefore that a nonprofit, in planning its voter participation or voter education efforts, be able to demonstrate that it has selected its target audiences and locations on a nonpartisan basis.

Because any IRS inquiry will, in almost all cases, come long after the event, a C3 should carefully document the nonpartisan rationales for its choices. This will ensure that contemporaneous evidence will be available if needed. It will also help the nonprofit demonstrate that the reasons given for its choices are not after-the-fact rationalizations.

Choosing the Target Group

A C3's voter-oriented program must be strictly neutral about the party and candidate preferences of the people it seeks to educate, register, or get to vote. Any effort to ascertain a person's party or candidate allegiance—directly or indirectly—is strictly prohibited. For example:

- a C3 may properly use voter registration lists to help it identify unregistered voters, but it may not use such lists to target a GOTV drive at registered Republicans or registered Democrats.
- a C3 may not screen people by finding out how they are likely to vote before helping them register or offering to drive them to the polling place.
- a C3 may not cite a particular candidate's name when encouraging people to register or vote.

The IRS has repeatedly ruled, however, that a voter participation program can qualify as “nonpartisan” even though it is aimed at certain blocs in the community—such as minorities, recent immigrants, students, the homeless, young people, women, rural residents, or low-income groups. This is so even if there is a

statistical likelihood that members of the group, based on past experience, will vote disproportionately for candidates of a certain party. Such a program will be considered “nonpartisan” so long as the C3 approaches group members without regard to their personal political orientation.

The IRS has explicitly approved aiming voter registration or GOTV drives at subgroups defined in terms of historical deprivation or discrimination. Such groups are usually defined by generic criteria (like race, gender, or language) or by economic status (like poverty, under-education, or unemployment). It is not necessary that the group literally constitutes a “charitable” class; it is sufficient that it be politically disadvantaged in some way. For example, it is appropriate to target C3 voter participation activity on a group (such as women) that does not hold electoral office in reasonable proportion to its numbers in the population.

It is also permissible to define subgroups based on the fact that their members, while not necessarily politically or economically disadvantaged, broadly share certain problems or have a community of interests. The IRS has explicitly approved selecting “students,” “business people,” “union members,” and “bank employees in a certain urban area” as appropriate subgroups. The same reasoning should apply to other broad categories selected by non-political criteria (such as “farmers” or “religious individuals”). Because such groups are politically diverse, the IRS is unlikely to regard the C3's mode of definition

as a mere proxy for partisan politicking.

On the other hand, a C3 should avoid defining target groups by political or ideological criteria. For example, it would clearly be improper for a C3 to aim a GOTV drive at “registered Democrats,” or to aim a voter education drive at “people who voted for Dole in 1996.” An FBI investigation, in connection with S&L payments to politicians’ favored GOTV groups focused on a memo written by the head of a voter-registration group, stating that “we want to help strengthen the capacity of state and local groups to motivate voters favorable to Democrats this year.” The IRS has ruled that an effort to register “conservatives” failed the nonpartisanship standard. Less blatant party-oriented forms of political skewing will also be questionable in the IRS’ view, such as targeting “peace activists” or “opponents of gun control.” There is no clear line; the key question in each instance is whether the C3’s mode of defining the group is just a surrogate for partisan activity—a disguised way of zeroing in on people with a definite candidate or party preference.

Choosing a Geographic Area for Your Work

The basic rule concerning a C3’s choice of site for any voter-oriented activity—whether “voter education,” “voter registration,” or “GOTV”—is that the selection must be governed by non-electoral factors. Thus, a nonprofit may not select the geographic areas for conducting a voter registration drive on the grounds that increased registra-

tion in the selected areas is likely to help certain candidates or favor a particular party. Rather, a C3 must use neutral and nonpartisan selection criteria that are not keyed to the outcomes of particular races.

In general, “neutral and nonpartisan selection criteria” are those that arise naturally out of the C3’s underlying charitable purpose or that are dictated by common-sense practical constraints. For example, if a nonprofit wishes to run a voter education drive, it would naturally select those areas whose residents are most likely to be interested in hearing its message. If a nonprofit wants to conduct a voter registration or GOTV drive, it would naturally select those areas whose residents habitually fail to vote. If a nonprofit is a small organization with modest funds, it would logically choose to save money by picking sites fairly close to home. And if a nonprofit has an established connection with a particular region or community, it would naturally opt to do its voter-oriented work in that area.

In short, a C3 must choose its sites with the objective of advancing its charitable purpose—educating voters about the issues and persuading them to vote—not with the objective of shaping the outcome of a particular election. In the following pages, we list some specific examples of selection criteria that (1) are clearly permissible, (2) are clearly impermissible, and (3) may or may not be permissible, depending on the particular facts involved.

Choosing Your Sites: What You Can Do

Permissible criteria are those that are designed to help achieve the C3's core mission and that reflect no bias for or against a particular candidate or party. In each instance, the listed criterion must be real; it must not be a mere subterfuge to conceal a partisan objective.

Permissible criteria include:

✔ **Historically low voter registration or turnout.** In deciding where to conduct a voter registration or GOTV drive, a C3 may properly concentrate its efforts in those areas where the problem of voter apathy has traditionally been most severe. Historically low levels of voter participation may likewise be considered in choosing the site for a voter education project. Obviously, one way of getting previously uninterested people to register and vote is to explain that the issues are important to them.

In selecting sites, a C3 may focus on low levels of voter participation either in the area's electorate as a whole *or* in an appropriate subgroup of the community. For example, a C3 might properly select seven states across the country in which voter participation, as a percentage of each state's total voting-age population, has historically been very low. Alternatively, if the C3 aims to increase participation by black voters, it might properly select five states that (1) have large black populations, (2) have large numbers of unregistered black voters, or (3) have especially high

percentages of black individuals who typically fail to vote.

✔ **Areas with high concentrations of the group you're aiming at.** If a C3 is concerned with particular groups or with issues that are especially important to particular groups within the community, it may properly direct its voter participation programs to areas where those people are concentrated. For example, a nonprofit seeking to advance the welfare of farmers would naturally focus on states with large rural populations, either in absolute or in percentage terms.

A C3 concerned about the homeless would naturally direct its efforts at large urban centers. And a nonprofit seeking to improve educational access for Hispanic-Americans would sensibly concentrate on areas with large Hispanic-American populations, or on population centers with large influxes of recent Hispanic immigrants. This mode of site selection is nonpartisan, because it represents a rational and efficient method of deploying a C3's limited resources.

✔ **Areas where the problem that you're concerned with is especially acute.** Just as a C3 may properly focus on areas in which its target group is quantitatively most numerous, it may properly focus on areas in which the group's problems are qualitatively most severe. Depending on the C3's mission, therefore, it might appropriately select areas of particu-

In evaluating whether a C3's activity is nonpartisan, the IRS will look not only to the content of its message, but also to its choice of audience.

larly high unemployment, acute poverty, or severe drought. This mode of site selection is clearly nonpartisan, for it reflects a desire to concentrate the C3's message in places where it can be expected to do the most good.

- ✓ **Areas with which your group has had a historical connection.** If a C3 has traditionally concentrated its resources in particular geographic areas, that historical connection is clearly a relevant criterion in selecting sites for future voter participation activity. By choosing such areas, the C3 may exploit its existing goodwill, its access to the media and experienced volunteers, and its familiarity with residents' concerns, thus enabling it to get its message across more efficiently. Selecting such areas may also be justified on purely economic grounds, e.g., because it is cheaper to use existing facilities than to expand into new areas. In short, considerations of cost and efficiency constitute "neutral criteria" for site selection.

Choosing Your Sites: What You Can't Do

The proper aim of a C3 voter participation drive is to urge people to vote and to vote in an informed way.

Because a C3 is prohibited from supporting or opposing particular candidates, the identity of the candidates may play absolutely no role, directly or indirectly, in the site-selection process.

Impermissible selection criteria thus include:

- ✗ **Picking sites in cooperation with a campaign.** Obviously, the nonpartisan selection requirement is violated where an organization consults with a partisan group in selecting the localities in which it will work.
- ✗ **Picking sites based on who the incumbents (or challengers) are.** Examples would include targeting races "where we hope to defeat anti-abortion incumbents," "where we can help save a good vote," "where key Agriculture Committee seats are at stake," or "where there is a strong environmentalist challenger in a winnable district."
- ✗ **Picking sites based on the C3's agreement with the candidates' positions.** Examples would include targeting races "where progressive challengers are running," "where conservatives have a good chance of winning," or "where we hope to pick up pro-choice votes in the House."
- ✗ **Picking sites because a candidate belongs to a group that the C3 wants to help.** Examples would include targeting races where a woman is running against a man, a black candidate is running against a white incumbent, or a farmer is running against a banker. As noted

earlier, a C3 may properly aim voter participation drives at particular groups within the community. But it may not select a target group because individual candidates in the contest are members of a particular group, because that decision prefers one group of candidates over another. Such candidate-based selection is improper even if the candidates supported come from both parties.

Choosing Your Sites: The Gray Areas

The IRS has given indications, through informal discussions and private rulings, that other site-selection criteria may be permissible in certain circumstances. A C3 should be cautious in invoking these criteria, however, since they may be unreliable if pushed too far:

2 *Picking sites based on the importance or closeness of particular states or races.* Informal contacts with the IRS suggest that there is no absolute bar against considering the electoral importance of a particular state when selecting sites. For example, it would probably be permissible for a C3 to run a voter registration drive in the six states “with the largest populations” or in the seven states “with the biggest electoral votes.” This mode of selection can be justified on the neutral ground that it represents an economical use of the C3’s limited resources—getting the biggest bang for its buck. This mode of selection can also be justified on the ground that voters in key states may be more receptive to issue

education, or more prone to get involved in the electoral process.

It is a much closer question whether a C3 may properly target “swing states,” “hotly contested races,” or states where a particular group is “likely to have a big impact on the election.” These are inherently election-outcome factors. Although such concentration of a C3’s resources can again be justified on grounds of greater voter receptivity, it can easily degenerate into partisan politicking. Consider the following example:

A C3 is dedicated to increasing electoral participation by Hispanic voters. The C3 does not choose to conduct its voter registration and GOTV drives in the states with the largest Hispanic populations or with the largest percentage of unregistered Hispanic voters. Instead, it targets a few close states whose Hispanic populations are thought to hold the balance of power, in the sense of being able to swing the state into the Republican or the Democratic camp.

This form of concentration on “swing states” suggests that the C3 wishes to influence the election’s outcome in favor of a particular candidate.

It is always risky for a C3 to focus on the outcome of a particular race or election. It is especially dangerous when the C3 aims its message at a group—such as a particular minority—that historically has voted disproportionately for members of a certain party. By zeroing in on those groups in swing states, a C3 may telegraph to

the IRS a desire to help a particular candidate or party win the election, not simply to help a particular group increase its voice in the political process.

Indeed, an organization whose message or target audience is such that the voters it brings out are likely to favor a certain party should generally take pains to demonstrate affirmatively that it did *not* choose to zero in on areas with close races. To take an example: a C3 that aims to increase farmers' electoral participation would likely have great difficulty explaining why it choose to work in the three farm states with the closest U.S. Senate races in a particular year, while ignoring neighboring states that had substantially identical farm problems but were regarded as "safe" for one party or the other.

2 Picking sites based on where a C3 has affiliates or wishes to advance its agenda. In a 1980 private ruling, the IRS accepted several other factors as permissible selection criteria. That ruling was issued to INDEPENDENT SECTOR, a large national organization with numerous members and with a wide range of programs having nothing to do with voter participation. As we shall explain, other charities—particularly newly created C3s whose agenda is narrowly focused—may not be able to rely so easily on these criteria, which are most persuasive when the C3 has a prior track record and/or an established national structure.

2 Availability of "logistic support." If a C3 has historical ties to an area, the availability of "logistic support" in that area—such as existing facilities, access to the media and community leaders, availability of an experienced volunteer staff and a network of citizen activists—may properly be considered in the site-selection process. This factor, however, may be much less persuasive when advanced by a new organization, by a C3 seeking to expand into new regions, or by a C3 with comparable support throughout the country. For such organizations, "logistic support" will often be equally available everywhere, so that its availability does not furnish a convincing rationale for choosing one site over another.

2 Requests from "local affiliates or other local organizations" that activities be conducted in their areas. For an established national organization, bona fide requests from local affiliates can furnish a persuasive reason for selecting one site over another. That is because the requesting entity can be expected to provide assistance, and because its request indicates a local receptivity to (or need for) the national organization's message. Of course, there are situations in which a local "request" is mere subterfuge. For example, if a national C3 acts to help generate a "request" from a local organization, the request is not an independent reason for choosing that locale.

Moreover, the mere existence of a "request" does not explain *why* the local organization made the request; it

may have done so because of a desire to defeat the incumbent congressman, which of course is not allowed.

2 ***An organization's desire to develop greater public awareness of its objectives or increase its exposure in an area.*** Where these motives are genuine and confirmed by some objective data (such as reports that a region has special interest in the C3's agenda), the desire to expand into new communities can be a legitimate, nonpartisan basis of choice. Once again, however, merely reciting such a desire does not validate an otherwise partisan tactic. The real question is *why* the nonprofit has picked one site over another as the place to focus their efforts. Because a C3's desire to increase its exposure may be prompted either by proper (educational) or by improper (electioneering) motives, the IRS may often find this factor unpersuasive as a neutral site-selection criterion.

Special Requirements for Private Foundation Grants

A C3 may accept private foundation funding specifically earmarked for voter registration only if the C3's site-selection both meets the general tests of nonpartisanship *and* conforms to the special rules of tax code section 4945(f). The section 4945(f) rules do not apply to unrestricted general support grants from private foundations, at least so long as the amount of the grant does not exceed the C3's total expenditures for projects other than voter registration.

The section 4945(f) rules likewise do not apply to private foundation grants earmarked for the C3's other projects, even though such grants will free up funds for voter registration work.

Where a C3 accepts a private foundation grant specifically earmarked for voter registration, however, it must comply with section 4945(f). That section imposes numerous technical requirements, including two basic rules about site selection:

- The C3's voter registration activities must be conducted *in at least five states*—and extend over more than one election period. This does not mean that the C3 must devote equal resources to each state. But it does require that the C3 make more than token efforts in each location.
- The C3 cannot accept funds *from any source* on the condition that it restrict its voter registration activities to certain geographic areas or election periods. This means that there can be no agreement, explicit or implicit, between the C3 and any donor—not just a private foundation—about where the grant-supported activities will be conducted. Rather, any decision as to sites must be made by the C3 unilaterally.

Focusing Voter Participation Activities on the Issues

As a general rule, it is entirely proper for a nonprofit to focus on the issues in structuring voter education, voter registration, and GOTV programs. A C3's core mission will often include taking substantive positions on issues it considers important. A C3 is not required to abandon its mission during an election year. Nor is it required to withhold its expertise on subjects to which it has devoted its energies.

Thus, a C3 may continue its normal public education programs during an election campaign period, even if the issues it addresses are controversial. For example, a group long involved in public advocacy on Central American policy could safely continue to run advertisements in its normal outlets, explaining its position and urging people to "work for peace in Central America."

Most of the tough line-drawing problems—and troubles with the IRS and members of Congress—arise when the message starts near election time or is linked to the election in some way, either explicitly or implicitly. In the rest of this section, we will

give some detailed examples of what you should and should not do in this area. Election-linked issue advocacy, while not altogether banned, must be handled with care. The Senate's concern over alleged abuses in recent elections demonstrate that misuse of issue ads is a subject the government will be watching closely.

During an election campaign, policy issues of concern to charities inevitably enjoy greater than usual public attention. A nonprofit properly may exploit this heightened level of voter awareness by injecting such topics into the campaign debate, with the aim of increasing public support for its policy stances. The focus of the C3's efforts, however, must be on promoting the nonprofit's viewpoint on the issues, not on promoting the candidates who agree with its view. Thus, a C3 may properly urge its supporters and sympathizers, and in some cases the general public, to place importance on subjects the C3 cares about, and to question candidates closely about those matters. But a nonprofit must carefully limit its voter education activities to discussion of its

agenda and not the candidates' views on that agenda.

The same general rule applies to a C3's voter registration and GOTV activities. It is clearly permissible for a C3 to try to persuade people to register and vote by emphasizing that the election's outcome will influence government policy on issues of importance to them. This is so even if the issues are controversial in the sense of generating strongly held opposing views within the community. But the focus of the C3's efforts must be on the issues, not on the candidates. A C3 must avoid creating the impression that it is registering people in the expectation that they will vote for a particular candidate, or that it is educating them about an issue so that they will vote for the candidate whose views on that issue coincide with the C3's.

In short, a nonprofit may make policy issues the focus of a voter participation program so long as it does so in a truly nonpartisan way. This requires more than simply refraining from open endorsements of a particular candidate's views. A C3 is likewise prohibited from publicizing a candidate's endorsements of its views. And a C3 may not distribute information about which candidates have or haven't adopted the positions it favors, even if the material stops short of an outright endorsement. That is because such activity inherently carries with it implicit support for (or opposition to) the candidates in question.

The IRS has taken the position, moreover, that so-called "issue education" can be partisan even

without mentioning a particular candidate by name. This will typically happen where the context of a statement—that is, all the surrounding facts and circumstances—creates the appearance of implied endorsement of (or opposition to) a particular candidate or party. Whether a court would agree with such an IRS stance is hard to predict. Indeed, even the IRS acknowledges that "issue advocacy" can remain permissible even though it coincides to some extent with well-known candidate positions. But caution is clearly appropriate given the uncertainty of the law in this area.

Problem Indicators the IRS Has Identified

The determination whether "issue education" is nonpartisan is ultimately a factual question, depending on many variables that must be balanced against one another. In past pronouncements, the IRS has mentioned a number of indicators which, on its view, tend to suggest that a neutral-sounding pronouncement may in fact be partisan politicking. As we shall explain, some of these indicators are fatal in themselves. Others are "red flags" that simply increase the chance of IRS scrutiny; the risk of a successful IRS challenge grows significantly when multiple "red flags" are flying.

🚩 Red Flag #1: Coordinating C3 activities with campaign events.

Any direct contacts between a C3 and a campaign (or with a PAC or other electioneering group) with a view to scheduling or otherwise coordinating activities is absolutely

barred. Even in the absence of such explicit cooperation, the IRS is likely to question the nonpartisan quality of C3 voter participation activities that appear to have been timed to coincide with events in a particular candidate's campaign. The following activities would be risky, for example, because in each case the timing of the nonprofit's message would suggest an intent to help or hurt the candidate or party in question:

- ❓ Scheduling a voter education blitz on water pollution to coincide with a major speech by one of the candidates about the environment;
- ❓ Running a series of radio and TV ads opposing the incumbent presidential candidate's main defense program during the weeks before and after the campaign debate on defense and foreign policy;
- ❓ Launching a voter registration drive in Chicago about the time that a political party launches its own partisan voter registration drive there.

On the other hand, a C3 does not have to abandon previously established plans because of later, purely coincidental, scheduling decisions by a candidate. For example, if a C3 in May of an election year had committed itself to a fall voter registration drive in six states, the C3 could stick to its schedule even though one presidential candidate later decided to campaign heavily in those areas during the month of October. This

underscores the importance of a C3's making its plans early, before the candidates' schedules become known. It is also important for a C3 to document its earlier-established schedule and avoid any appearance that it is coordinating its efforts with a candidate's.

❓ **Red Flag #2: Defining the issues too narrowly.** The IRS has often said that a voter participation program should cover "a broad range of issues." By defining the issues broadly, a C3 will minimize the chances of an exact correspondence between its views and the views of particular candidates. For example, if a nonprofit defines its interests as "issues of importance to rural voters," the agenda will include such diverse topics as farm-price subsidies, water projects, environmental pollution, and balance-of-trade problems. It is unlikely that the views of any one candidate on such diverse subjects would coincide precisely with the C3's views. On the other hand, if the nonprofit defines the issue as "opposition to particular farm-subsidy cutbacks" or "support for particular drought-relief measures," the C3's communications could easily appear to be aimed at certain candidates. The very narrowness of the C3's focus, in other words, may imply an endorsement of the candidate whose position so closely resembles its own.

Defining the issue too narrowly also has the effect of injecting the C3's position as a "measuring rod"

by which to judge candidates' fitness for office. Consider, for example, the following statement by a nonprofit: "We support a rollback of Social Security taxes—ask the candidates if they agree." From the IRS' point of view, this statement may imply that a candidate's disagreement with the C3's position on this limited issue is grounds for voting against him or her. The IRS would be especially likely to take that stance if the nonprofit knew that the candidates had already split on the issue. On the other hand, a C3 may properly urge voters to "question the candidates closely on defense issues" or "insist that the candidates take clear stands on the budget deficit." Such statements, because of the neutrality of their phrasing and the breadth of the issues they cover, do not imply endorsement of (or opposition to) a particular candidate.

In short, a C3 should try where possible to choose a diverse range of topics (such as "labor and the economy") or a basket of issues grouped together under a unifying heading (such as "environmental issues," "defense issues," or "children's issues"). There is nothing wrong with picking a basket of issues (such as "defense issues"), then highlighting a reasonably large and diverse number of subtopics that are of greatest current interest (such as "international arms reduction," "the peace dividend," "defense procurement policy," and other specific, controversial defense

subjects). But a C3 should not zero in on a single topic within a given category (such as "acid rain," "the Star Wars program," or "children's TV advertising").

For these reasons, special care must be taken in framing the issues when the C3 itself has a very narrow agenda. A nonprofit like the Boy Scouts or the United Way, for example, will find it comparatively easy to cover a "broad range of issues," simply because it is concerned with a great variety of issues. By contrast, a C3 that is solely dedicated to "educating the public about reproductive rights" may often find it difficult to frame the issues in a way that does not imply support for (or opposition to) a particular candidate or party. For such a nonprofit, the safest course is to refrain altogether from mass-media voter education advertisements once the campaign gets under way.

As we explain below, "breadth" is not an automatic guarantee of nonpartisanship. The IRS is likely to be suspicious if a C3's list of positions, though diverse, almost exactly matches the positions that divide the candidates in the area where it works. But picking a broad range of issues is at least a good start.

? ***Red Flag #3: Focusing on issues which track an organization's known agenda.*** Even where a C3's voter education materials address a broad range of issues, if the issues presented appear to have been selected to encourage readers to

compare candidates' positions with those of the C3, the IRS may find an implied endorsement of the candidate whose positions track the C3's views. For example, in 1989 the IRS proposed to revoke the exemption of a C3 established to promote conservative Christian values in part because of voter guides it distributed during an election campaign. Because the guides identified the organization's religious focus and emphasized issues on which its position was readily apparent—parents' rights, abortion, ERA, homosexual rights, church-school freedom, evolution, creationism, and legalized prostitution—the IRS saw the guides as an attempt to influence the election.

? **Red Flag #4: Emphasizing high-profile issues.** During the early stages of an election campaign, the issues are often undefined, and the candidates are unlikely to be strongly identified by the public with particular positions. As the campaign progresses, however, a few issues usually begin to assume crucial importance. Certain topics may be actively debated by the candidates, with the candidates trying to “define themselves” by clearly differentiating their positions from their opponents'. Other issues may be identified with particular candidates because they were specifically adopted as themes in those candidates' ads or speeches.

A C3 should be cautious in doing election-linked “voter education” on high-profile issues

that divide the candidates, especially during the last few months of a campaign. This is so even if the issue itself is a broad one, like “crime,” if the candidates have managed their campaigns so as to divide sharply and prominently on that front. If a C3 emphasizes high-profile issues when urging people to vote, the IRS may interpret the C3's message as an implied endorsement of the candidate whose publicly expressed position resembles its own. An IRS official has informally described the test as whether a particular label—like “liberals”—is being used as a stand-in for a candidate's name.

This risk can be minimized by (1) defining the issues broadly and neutrally, (2) refraining from media blitzes just before Election Day, and (3) not casting the discussion in terms that follow the fault lines between the candidates' well-publicized positions. These cautions are especially important for new groups that do not have the defense that they were taking and publicizing their positions long before the candidates did.

? **Red Flag #5: Distributing issue-oriented materials to the general public immediately before the election.** The IRS has often questioned the nonpartisan character of issue-oriented voter education materials that are “widely distributed among the electorate,” especially when the distribution occurs late in the campaign. Given the shortness of people's attention spans, messages

disseminated just before Election Day will tend to have a greater impact on behavior in the voting booth—and thus be more suspect in the eyes of the IRS—than materials distributed months earlier. Use of the mass media also enables a C3 to target particular states and saturate the electorate—an ability a group usually lacks when it restricts distribution to its existing membership or subscriber list. Consider the following example:

A C3 health group runs newspaper ads in five congressional districts blasting the local House members' voting record on tobacco price supports. The ad reads: "It's time we went out of our way to let him know that his actions threaten the health of American men and women everywhere and don't represent the people of this area. Tell him not to do it again."

If this ad appeared in a non-election year, it would probably constitute permissible C3 activity: drawing attention to the voting records of sitting members of Congress. On the other hand, if the ad appeared in the middle of an election campaign in which the incumbent's position on tobacco price supports was a hotly debated issue, the IRS would surely contend that the C3 was engaged in partisan politicking.

The IRS has indicated informally, however, that grassroots lobbying communications which simply report past votes and which appear as part of a bona fide lobbying campaign will be treated as grassroots lobbying rather than

electioneering. Compare the following example:

The week before a key vote on a bill proposing to increase tobacco price supports, a C3 health group runs newspaper ads in five congressional districts reporting the local House members' voting record on this issue. The ad reads: "Twice before, he has voted to maintain price supports for a crop that damages public health. Tell him to vote against increased price supports for tobacco when the issue comes before the House next week."

If the sponsoring organization has a track record of lobbying against tobacco or on other public health issues, the IRS would be unlikely to challenge this ad as electioneering. Of course, the IRS will view any "lobbying campaign" which appears timed to coincide with an election or which appears unrelated to the organization's traditional areas of concern with considerable suspicion.

A C3's aim in "issue education" should be to inject a topic into public discourse, *not* to highlight the issue at a time when it has become a measuring stick for choosing candidates. For this reason, it would be prudent for a C3 to refrain altogether from mass-media issue-education messages on prominent campaign subjects during the last month of the campaign, unless the C3 had an established past practice (such as a quarterly newsletter) of distributing the information at that time to that audience. We should emphasize that this is not an absolute rule. In particular, estab-

lished patterns of communication about an organization's agenda can probably safely be continued, especially if there is no link suggested between the issue and the election.

The same degree of caution is obviously unnecessary in the case of issue-neutral voter registration and GOTV. Registration and GOTV activities must inevitably be done near Election Day. Few problems are usually posed by neutral messages in which a C3 urges its members to vote, or by mass-media messages like public service radio announcements.

? ***Red Flag #6: Explicitly linking the issues to the election.*** As noted earlier, it is generally acceptable for a C3 to urge people to register and vote on the ground that the election involves issues of importance to them. Indeed, it would be hard to imagine a registration or GOTV drive that did not refer to the coming election. But such references are more problematic where "issue education" is concerned, especially when the issue is narrowly defined or is one that divides the candidates.

A C3 message that urges people to vote on the basis of a certain issue—where that issue clearly divides the candidates—puts the C3 into the most sensitive part of the electoral process. It therefore creates great potential for being seen as a message about candidates, not issues.

Consider, for example, the following five statements by a

nonprofit, each circulated close to the election:

"Oppose tax money for abortions. Make yourself heard on Election Day."

"Something has to change. Join the debate on Star Wars this November. The choice is ours."

"Let's choose leaders who will lead us away from the oppression of big government. Vote...our future depends on it."

"Don't be part of the silent majority. Speak out about tax reform."

"President Yeltsin has paid us a peace dividend. Join the debate on how we should use it."

The first two statements are quite problematic. They define the issue narrowly, in a way that divides the parties. They specifically refer to the election and link the issue to it. And they urge people (at least implicitly) to vote for or against candidates on the basis of that single issue. The IRS could well regard these statements as indirectly endorsing or opposing particular candidates, depending on the candidates' agreement or disagreement with the nonprofit's position. Indeed, in a case involving the Youth Project, the IRS said that it was troubled by a statement very much like the second, which was aired during the 1984 presidential debates, when support for the Star Wars program was an important campaign issue.

The third statement is less problematic than the first two, but it is still troublesome. It specifically refers to the election, uses a catch

phrase more likely to be used by one party than the other, and urges people to vote on the basis of a particular issue. On the other hand, it defines the issue broadly (“big government”) and is somewhat equivocal about whom it supports: both parties can presumably claim that their policies will avoid “the oppression of big government.” The propriety of an ad like this would probably depend on its context and on how starkly the candidates’ positions on “big government” were portrayed in the campaign.

The fourth and fifth statements are clearly proper. They define the issue broadly, do not mention the election, and simply urge people to get involved in solving a problem. If the C3 instead had urged people to speak out or join the debate “on Election Day,” the statements would probably still be permissible given the breadth of the issue. But the explicit link to the election would add an element of risk, particularly if the identification of the organization sponsoring the message negated the apparent neutrality of the statement. For example, the IRS would be more likely to read the fourth statement as an implied endorsement if it were said to be “brought to you by the Committee to Eliminate the Capital Gains Tax.”

As these examples suggest, “voter education” messages can present tough line-drawing problems when they are explicitly linked to an election. In each case, the

ultimate question is the same—whether the message and its context, considering all the surrounding facts, amounts to telling people how to vote. Because this question will usually be easier to ask than to answer, it is prudent for a C3 to err on the side of caution in close cases.

🚩 Red Flag #7: Defining the selected group in a partisan way.

As noted earlier, a C3 may properly aim its voter participation program at an appropriate subgroup within the community. It may do so, moreover, even if there is a statistical likelihood, based on past experience, that members of the group will vote disproportionately for candidates of a particular party. But a nonprofit should not select a target group on a basis that is *itself* political or ideological. And it must not inquire, directly or indirectly, into the voting intentions of the people it addresses.

Special Note:

As we noted at the beginning of this section, a few of these problem indicators—such as deliberately coordinating C3 events with a political campaign—are “killers” that nonprofits absolutely must avoid. Many of the indicators, however, are just “red flags”—factors that will tend to attract IRS attention and hence add an element of risk, but which are not necessarily fatal in themselves. The IRS is not likely to question a C3’s activity unless several red flags are waving at once—for example, if a C3 does mass-media “issue education” just before Election Day on a narrow issue that closely divides the candidates. Our main objective here is to point out the risk factors so that you can take them into account in making your plans.

Special Topics in Voter Education Programs

This section focuses on special problems that arise with some frequency in certain types of voter education programs. We will concentrate on five types of activity: candidate forums, distribution of voting records, candidate questionnaires, public opinion polls, and training programs. As we will explain, problems in these areas are most commonly encountered by:

- C3 organizations that have a narrowly focused agenda of issues;
- Newly formed C3 organizations that have no track record of past activities.

Candidate Forums

The IRS has ruled that C3 organizations may conduct candidate forums provided certain guidelines are followed. The general standards are that the procedures for the forums must not show a bias or preference for or against any particular candidate and that the overall effect must be fair and impartial treatment of all candidates, with nothing that promotes or advances one candidate over another.

More specific rules are these:

1. The sponsoring organization must

have a record of concern with public and legislative issues.

2. All viable candidates must be invited to the forum. Although the IRS has officially phrased this requirement as an obligation to invite all “legally qualified” candidates, it has also indicated that, when it is impractical to invite all who will appear on the ballot, the sponsors of a debate can adopt “reasonable, objective” criteria to limit participation.

Elsewhere, IRS officials have suggested that invitations can reasonably be extended only to “significant” or “viable” candidates. A court decision spoke of the need to invite all major party candidates and “significant minor party” candidates. Thus, the relevant requirements are satisfied if a C3 invites both the Republican and the Democratic nominees, as well as any serious independent or third-party candidate.

The rules set forth in the preceding paragraph apply to general election forums and debates. If a C3 runs a debate or

forum during the primary season, the only candidates that must be invited are those contending for the particular party's nomination. For example, suppose that a C3 holds two televised primary debates in California, one involving contenders for the Democratic Party's gubernatorial nomination and the other involving contenders for the Republican Party's gubernatorial nomination. The C3 should invite all viable Democratic candidates to the first debate and all viable Republican candidates to the second. Independent or third-party candidates need not be invited to either event. And a C3 is under no obligation to sponsor primary debates for both parties. However, the decision to focus on only one party's primary does not reflect any bias for or against that party.

- 3.** The choice of location for the forum must be dictated by non-political considerations.
- 4.** Each forum must address a broad range of issues, including issues considered to be of important educational interest to the organization's members. The forum need not cover all possible issues. It can be limited to the range of issues with which the sponsoring organization and its members are chiefly concerned, provided the range is reasonably broad. Thus, the forum could focus on a single general topic, like economic policy, national security, civil rights, or the environment, but could not be limited to a single matter within such a topic.
- 5.** Questions must be prepared and presented to candidates by a nonpartisan panel composed of knowledgeable persons from the media, educational organizations, community leaders or other interested persons who are independent of the sponsoring organization. The format need not be limited to questions, but can include a general discussion among the candidates.
- 6.** Each candidate must have an equal opportunity to present his or her views.
- 7.** Questioning procedures must not be biased to favor or hinder any candidate.
- 8.** The forum must be run by a moderator, who does not act as a spokesperson for the organization's views on the subjects discussed, but has the sole function of ensuring that the ground rules are observed.
- 9.** At the beginning and end of each forum, the moderator must state that the views expressed are those of the candidates, not of the sponsoring organization, and that the sponsorship of the forum is not an endorsement of any candidate.
- 10.** The moderator must also state that all candidates have been invited. IRS staff members have informally advised that, if one or more of the invitees declines, the forum can go forward, but, in that event, the C3 should exercise special care to avoid favoritism to those candidates who do show up.
- 11.** The organization may report what happens at the forum, but must do

so without editorial comment or endorsement and must circulate the report only through its normal channels of communication.

Except for forums that strictly follow these guidelines, C3s run substantial risks if they sponsor any appearances by people who are current electoral candidates. In principle, individuals who are in fact candidates can appear at C3-sponsored events, if they clearly do so in some non-candidate capacity (e.g., as an elected official or as a celebrity in a non-political field) and if there is, at the event, no reference to their candidacy.

However, as a practical matter, such references may be hard to avoid, and the IRS might view the primary purpose of an event as providing increased exposure to the candidate, even if the appearance is billed as “nonpartisan” or “educational.” Special, more permissive, standards may apply to schools, universities, and churches. But other C3s should regard these guidelines as setting forth the only conditions under which they may sponsor candidate appearances during a campaign.

Publication of Incumbents’ Voting Records

A C3 may, under certain circumstances, publish and distribute voting records of incumbent members of the U.S. Congress or other legislative bodies. In undertaking this educational function, a C3 must avoid the appearance of endorsing or opposing candidates based on its agreement or disagreement with the candidates’ past voting patterns. A C3 must observe the

following guidelines in order to maintain the nonpartisan character of its legislative reporting:

1. The voting records of all incumbent members of the legislative body who represent the region you’re working in should be included.
2. The report should not identify legislators as candidates for reelection.
3. The voting records should not be linked to any election campaign.
4. The voting analysis should cover a broad range of issues.
5. Normally, the voting record must be presented in a way that does not imply approval or disapproval of the votes reported. A C3 may evaluate the member’s voting record—e.g., by indicating with a “+” or “-” which votes agreed with the C3’s position only if the following precautions are observed. The evaluation must be part of a continuing program to report on the C3’s lobbying effort, and it must be circulated only to the limited audience (members, subscribers, etc.) that normally receives the C3’s lobbying newsletters, with no special targeting of areas where incumbents are running for reelection. Such an evaluation report must also acknowledge what the IRS describes as “the inherent limitations” of judging a legislator on the basis of a few select votes, pointing out that the electorate should consider such other matters as performance on committees and constituent service.

Even if these general guidelines are followed, caution is required in the following two situations, both of which are likely to attract special IRS scrutiny:

2 **Publication of incumbents' voting records after a campaign is underway.** Congressional campaigns usually begin in earnest during September or October of an election year. The IRS is particularly likely to question a C3's distribution of voting records during this period. The IRS will look carefully at all the surrounding circumstances—the nature of the C3, the extent of the records' dissemination, the types of votes covered, and the C3's prior distribution patterns for other material—to see if there is any *implied* endorsement of (or opposition to) any candidate. If there is such an endorsement, the C3 will be deemed to have engaged in partisan politicking even if it based its evaluation on supposedly "objective" criteria. For example, a bar association's evaluation of candidates running for elective judicial office was held to be "electioneering," despite the association's protestations that its rating methodology was neutral and objective.

For this reason, the safest course for many charities is simply to refrain from disseminating incumbents' voting records during the later stages of a campaign. Such abstention is not required where:

- a nonprofit's consistent past practice has been to publish such

Great caution should be exercised by C3s with no track record along these lines, such as newly created C3s, C3s that propose to publish voting records for the first time during a campaign period, and C3s whose past publication of voting records reveals no clear pattern.

records during the latter months of the year as part of its regular lobbying reporting; *and*

- the publication is circulated to a relatively small group (members, subscribers, etc.) with which the C3 communicates on other issues at other times.

For example, if a C3 is engaged in lobbying, and if in connection with its lobbying it has traditionally published an annual legislative survey in September, it could prudently follow its usual practice in September of an election year. Similarly, if a C3 puts out a quarterly magazine that (among other things) summarizes legislative votes of interest to its members, the C3 would not be required to omit that material from an issue published in the fall of an election year. In such situations, the regularity of the C3's past practice—as well as the fact that publication of voting records grows naturally out of its lobbying work—rebutts the inference that the C3's action was timed to influence the election.

On the other hand, great caution should be exercised by C3s with no track record along these lines, such as newly created C3s, C3s that propose to publish voting records for the first time during a campaign period, and C3s whose past publication of voting records reveals no clear pattern.

? **Widespread dissemination to the public at large.** The IRS can be expected to scrutinize carefully the manner in which voting records are distributed. Only a truly neutral compilation of votes may be disseminated to the general public. If a C3 includes with the compilation an evaluation of the votes cast, the package should be circulated only to the C3's normal constituency (members, subscribers, etc.). In either event, the mailing must not be targeted only to areas where the incumbents whose votes are reported are candidates for election.

Candidate Questionnaires

In general, a C3 may prepare questionnaires for circulation to all candidates running for a public office, so long as the questions are framed without bias. A C3 may likewise compile the candidates' responses to its questionnaire for distribution in a "voters' guide," provided that the compilation is not accompanied by evaluation of the responses. In each case, the C3 must ensure that the format does not appear designed to make candidates look acceptable or unacceptable to voters on the basis of their answers.

✓ **Examples of non-biased questions:**

"Do you favor providing government vouchers for private school tuition?"

"What government programs would you increase if funds were available, and which would you cut?"

"How should we deal with the drug problem?"

✗ **Examples of biased questions:**

"A recent poll shows that most Americans oppose vouchers for private school tuition. What is your view?"

"A large body of scientific opinion holds that we need to act now to reduce CO2 emissions and slow global warming. What is your position?"

"The EPA brought fewer environmental enforcement actions during the last four years than during any comparable time period since it was created. How do you view this record?"

Apart from biased questions, candidate questionnaires typically cause problems when the C3 itself has a very narrow focus or where the questionnaire concentrates on too narrow a range of issues. The IRS has contended that the very narrowness of such a focus implies an endorsement of those candidates whose replies are most favorable to the C3's position. Thus, the wisest course for a narrowly focused nonprofit is to refrain from circulating candidate questionnaires limited to its concerns or at least to refrain from publishing the candidates' replies.

A similar rule applies when a C3 asks candidates to react to a position paper that it has prepared. For example, suppose that an environmental organization drafts a memo outlining its position

on a narrow issue, such as addition of certain lands to a national forest. There is nothing wrong with the C3 asking candidates to respond to its position, as will occur, for example, when a C3 offers nonpartisan testimony before party platform committees. But the C3 should not publicize the candidates' response, since the distribution of such candidate statements directly agreeing or disagreeing with the group's views is an implicit endorsement—and hence a clear form of prohibited “electioneering.”

The IRS has considered a case where, in its view, a survey turned into an implied endorsement. A fundamentalist religious group circulated questionnaires to candidates asking their views on numerous “social issues,” such as abortion, secular humanism, and homosexual rights. The group published the candidates' responses in a “voter survey” which was distributed to its members, accompanied by a reminder that Christians have a religious duty to “vote righteously.” Although the group explicitly stated that it wasn't endorsing anybody, the IRS strongly suggested that the group's activities amounted to implied “electioneering.”

Public Opinion Polls

A C3 may find it advantageous, in advancing its charitable purposes, to demonstrate to government officials the breadth of public interest in issues the nonprofit cares about. One method of accomplishing this objective is to take public opinion polls. As a rule, a C3 is free to continue taking public opinion polls during election campaigns,

provided that (1) the questions in the poll are framed to be fair and neutral among the candidates, (2) the C3 uses accepted scientific polling techniques in conducting the poll, and (3) the questions do not directly or indirectly concern the records or positions of particular candidates or parties. In other words, so long as the poll concerns issues rather than candidates, the taking of the poll is permissible even if the issues have become the subject of campaign debate.

Once a C3 takes a public opinion poll, it may release the poll results to the candidates in order to demonstrate to them the depth of public concern about the subject. In this respect, the poll results are treated the same way as other educational information (such as a pamphlet or brochure) that a C3 might furnish to candidates. So long as the C3 sends the poll results to all candidates on the same terms, there will be no prohibited “electioneering.”

It is a more difficult question whether a nonprofit could properly release the poll results, not only to the candidates themselves, but also to the press or the general public. On the one hand, if the C3 for many years had conducted an annual public opinion poll and had released the poll results at about the same time each year, it would probably be permissible for it to follow its usual practice during an election year.

On the other hand, if the nonprofit had no established practice as to when poll results would be released, and if the results of its poll were released shortly before Election Day during a campaign in which the relevant issues had been sharply debated by the

candidates, the C3's action would probably be deemed "electioneering." The more common situations are likely to lie somewhere in between these two poles. The outcome would then depend on the particular factual context—the timing of the C3's press release, the type of supporting information accompanying the poll, the nature of the campaign events transpiring about that time, and the degree to which particular candidates had strong public profiles on the relevant issues.

Training Programs

A C3 may conduct training sessions to increase citizens' understanding of the electoral process and to stimulate more effective public participation in the selection of government officials. Such programs need not be confined to civics classes, but may include instruction on "citizen action" techniques, such as "how to run a GOTV drive" or "how to deal with the media." Such training sessions can qualify as "educational" activity so long as they are truly nonpartisan in purpose and effect. At a minimum, this means that a C3's training program:

- cannot be designed to assist particular candidates or parties, e.g., by training primarily individuals connected with particular campaigns or their supporting groups.
- cannot be operated with the objective of directing trainees into certain political campaigns.
- must be open to all comers, i.e., must offer training to people regardless of their party affiliation or candidate preferences.

Besides being theoretically nondiscriminatory, a C3 must make honest efforts to involve members of both parties in its training programs. Often this will require special outreach to people who would not otherwise be likely to participate. Despite a C3's assertion that it is willing to train anyone who applies, the IRS will take a dim view of a program that in fact trains only Democrats or trains only Republicans. This will rarely be a problem for an established organization that has a nationwide reputation and actually trains people from both parties. But special outreach efforts will often have to be made by new groups with no track record of bipartisanship, particularly where the group is recently formed with a view to taking part in a particular election.

To take an example, a court upheld the IRS' position that a nonprofit educational organization called the American Campaign Academy was not entitled to C3 status. The organization operated a school to train people for careers as political campaign professionals. Although it claimed that its training was nonpartisan and was open to everyone, and although its formal organizational documents met all the legal requirements for exemption, the court decided that the program really had the partisan objective of benefiting the Republican Party. The court relied on the following factors in reaching that conclusion:

The American Campaign Academy was an "outgrowth" of a training program previously sponsored by the Republican National Congressional Committee ("RNCC");

It was incorporated by a RNCC official and a majority of its board of directors had ties to the Republican Party;

It received most of its funding from Republican sources;

It gave courses on partisan topics like “How Republicans Win Black Votes,” without balancing the curriculum with comparable studies of the Democrats or other parties;

It could not name a single graduate (out of a total of 120 graduates) who had worked in a Democratic campaign.

Assuming that a C3’s training program is “nonpartisan” under the standards described above, it may focus the program (just as it could focus a voter education program) either on the electorate as a whole or on an appropriate sub-group within the community. For example, if a C3 is concerned with increasing black voter participation in the political process, it might appropriately target GOTV training at black volunteers, on the ground that such persons would be most effective at turning out black voters in

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the vicinity. It would be irrelevant in this connection that black voters as a group have historically tended to be registered Democrats, so long as the C3 trains its volunteers on a nonpartisan basis.

Much more difficult questions arise when a C3 defines its subgroup by ideological criteria, especially if the C3 itself has a narrowly focused agenda. For example, suppose that a C3 is dedicated to “protecting government programs for the poor” and targets its training programs at “progressive activists.” If practically all the volunteers trained by the C3 in fact go on to work for Democratic congressional candidates, the IRS would almost certainly contend that the C3 is engaging in “electioneering.” This problem will arise whenever a C3’s agenda is so narrowly focused that its training programs will almost invariably appeal only to adherents of a particular party or to supporters of particular candidates.

Here are some other examples of appropriate and inappropriate C3 training programs:

Appropriate Training Programs

- ✓ a C3 dedicated to promoting ethical campaign practices offers training about election rules to individuals (both voters and prospective candidates) regardless of party affiliation.
- ✓ a C3 dedicated to increasing public participation in the electoral process provides information about ballot access laws to any person wishing to run for office.
- ✓ a C3 conducts training sessions, attended by 65 Democrats and 40 Republicans, in public speaking, handling the media, and conducting press conferences.
- ✓ a C3 dedicated to advancing women’s rights runs citizenship

training programs focusing on the barriers that have obstructed women's access to elective office.

- ✓ a C3 dedicated to advancing minority rights runs workshops at which minorities are urged to get involved in politics and run for a variety of local offices.

Inappropriate Training Programs

- ✗ a C3 runs a one-day training session on the delegate selection process, devoting seven hours to the Republican Party's rules and 20 minutes to the Democrats'.
- ✗ a C3 dedicated to advancing minority rights recruits a prominent Hispanic individual to run against a white incumbent for a House seat.

- ✗ a C3 provides nationwide "liaison and backup," in the form of monthly newsletters and "action information," to a network of local groups involved in partisan politicking.

- ✗ a C3 dedicated to expanding commercial use of public lands trains organizers to identify "swing voters" who are sympathetic to that cause and turn such voters out on Election Day.

- ✗ a C3 runs training programs in "media skills" attended almost exclusively by the staffs of a few like-minded candidates.

Describing Past Accomplishments and Future Plans

In drafting grant requests and communicating with its constituencies, a C3 will naturally want to describe its past achievements in the voter participation field. In seeking funding for future projects, a C3 will likewise need to describe the expected impact of its proposed program. The language used in these communications is extremely important, because it will provide evidence about the C3's motives behind its activities. This evidence in turn will affect the IRS' view of whether the C3 is engaging in permissible voter participation activities or in prohibited electioneering.

Communications with prospective funders, current donors, and voters must conform to the basic proposition that a C3 is not, and cannot legally be, in the business of seeking to elect or defeat candidates. That is, neither past accomplishments nor future goals should include affecting—or be described as affecting—the outcomes of elections. Instead, a C3 should always focus on how well it has previously achieved, and on how it plans to achieve, its basic charitable

mission, which includes educating voters about the issues and encouraging people to register and vote. The C3 should avoid descriptive language that is keyed to election outcomes, whether of particular races or of the election as a whole.

Here are some examples of appropriate and inappropriate language that might be used to describe a C3's past accomplishments in the field of voter education and registration. (The same principles, of course, would apply in describing a proposed future project).

Appropriate Descriptive Language

It is clearly permissible for a C3 to set forth statistical or other data that show the scope and extent of its previous activities, without referring to results.

✔ ***The following statements in a grant application would thus be proper:***

“We expanded the size of our volunteer staff to 130 people this year, up from 85 one year ago.

“During the recent campaign, we distributed 12 candidate questionnaires and conducted 4 public opinion polls on environmental issues.”

“We raised \$3.5 million last year, which will enable us to expand our voter education activities to eleven states, versus six states two years ago.”

It is likewise permissible for a C3 to describe the results of its activities, provided it does so in neutral and nonpartisan terms. Such descriptions should focus on the C3’s success in getting across its educational and GOTV message.

✓ *The following statements in a grant application would also be proper:*

“We registered 12,000 Hispanic voters during this year, up from 7,800 two years ago.”

“Partly because of our efforts, African-American voter turnout in Mississippi and Alabama increased to 42% of eligible voters this year—a 7% increase.”

“On Election Day, we provided free transportation to the polls for 13,000 voters in nine states. Most of them said that they would not have voted otherwise.”

“Polls show that 61% of eligible voters now rate the environment as a ‘very important issue,’ as opposed to 48% who rated it as ‘very important’ two years ago. This is due in part to our voter education efforts.”

“In public-opinion surveys taken this year, 63% of those responding voiced a firm opinion on issues that we tried to make the focus of candidate debate. Four years ago, by contrast, 45% of the respondents said they had ‘no opinion’ on these issues.”

“A recent poll showed that 76% of rural voters want the candidates to take clear positions on farm issues. That is a significant increase from two years ago, and it demonstrates the effectiveness of our rural voter education program.”

Inappropriate Descriptive Language

It is improper to describe past accomplishments using language that refers to the outcomes of particular races. Such language will create the inference that your real objective is partisan electioneering, however innocently you describe your plans for the future.

✗ *The following statements in a grant application would thus be inappropriate:*

“We helped elect three women to the Senate.”

“In the last election we elected three pro-choice governors.”

“We helped bring five good votes on Medicare to the House of Representatives this year.”

“During this last election we trained 55 organizers in 14 swing districts where our voters held the margin of victory.”

“During the last election, we worked to make affirmative action a major campaign issue, and the winning candidates’ support for minority preferences was a decisive issue in close campaigns in three congressional races.”

“The 8,000 new pro-choice voters we registered were more than the new governor’s margin of victory.”

“Senator-elect Smith attributes his victory to our nonpartisan efforts to increase voter turnout.”

C3-C4-PAC Combinations

The previous sections have outlined various rules that a C3 organization should follow during an election year. The situation is a little more complicated when the C3 has a section 501(c)(4) affiliate. Unlike C3s, C4s are not barred from intervening in political campaigns. The tax code permits C4s to engage in a direct political activity, such as urging members to vote for particular candidates, so long as electioneering is not the C4's principal activity. The situation becomes still more complicated when the C4 in turn has a PAC, which, unlike a C4, can contribute money to federal candidates. (Generally, C4s themselves cannot contribute money to federal candidates; that would be a prohibited corporate contribution under the federal election campaign finance law. In *Massachusetts Citizens for Life*, the Supreme Court ruled that "purely ideological" C4s can make campaign contributions.)

The Supreme Court has upheld the right of a C3 to create a wholly controlled C4 to conduct lobbying activity beyond what the C3 could do directly. The only requirements are that a clear corporate separation be

observed and that the C4's lobbying activity be financed 100% with nondeductible contributions to it. The clear logic of the Supreme Court's opinion entitles a C3 to create and control a C4 that engages in electioneering activity, again provided that a clear corporate separation is observed and that the C4's political activities are wholly financed with nondeductible funds. The IRS routinely grants C4 exemption to organizations whose applications explicitly state that they will be controlled by C3s and will engage in electioneering within C4 standards. However, those organizations are thereafter subject to special scrutiny to assure that the C4—and its associated PAC, if there is one—are not being subsidized by the C3.

The danger inherent in such C3-C4-PAC combinations is that they may provide a basis for an IRS claim that the C3 is trying to do indirectly what it cannot do directly—engage in political activity and give money to political campaigns. This may occur, for example, if the C3 coordinates its activities with the C4 or shares its resources with either the C4 or the PAC.

For this reason, the presence of politically oriented affiliates greatly increases the burden on the C3 to show that its own activities are completely nonpartisan. The risk of IRS challenge is especially high in these situations, because the IRS, responding to congressional concerns, has singled out affiliated C3s and C4s for special audit attention. A C3 must be prepared to prove to the IRS that the C4 paid for all its electoral activities with nondeductible funds, and that the C3's educational resources were not used to support the affiliate's political work.

Here are some of the difficulties that commonly arise when a C3 has an affiliated C4 with or without a PAC:

Improper Coordination Between a C3, C4 and PAC

We have emphasized earlier that a C3 must avoid direct or indirect cooperation with a political campaign. It is equally important that a C3 avoid coordinating its program with partisan activities of an affiliated C4 or PAC. Such coordination will constitute strong evidence that the C3 and the C4 or PAC are functioning in effect as a single electioneering machine. The following examples of improper activity illustrate this problem:

- ✘ a C3 runs a voter registration drive, then gives its affiliated C4 (and no other group) its list of new voters for use in the C4's political work.
- ✘ a C3 conducts training sessions in GOTV skills attended primarily by employees of its affiliated C4, who then go out and work for a particular candidate.

- ✘ a PAC rents its mailing list to the C3, which then aims a GOTV drive at people on the list.
- ✘ a C3 operates during the early months of an election year doing ostensibly nonpartisan educational work. In August, it closes down and its staff goes to work for an overtly partisan C4, with a similar name and substantive agenda.
- ✘ a C3 pays the costs of ostensibly nonpartisan events, such as training sessions or issue workshops, but the C4 is advertised as the sponsor of the activity, although it has no role in conducting or sponsoring the events, in order to enhance its reputation and help its partisan fundraising.
- ✘ a C3 runs a grassroots lobbying campaign targeted specifically on congressional districts in which the C4 is conducting electoral activities; the lobbying communications are designed to call attention to incumbent legislators' voting record on the same issue that will be the subject of the C4's efforts.

Improper Coordination of Fundraising

Fundraising by a C3 and a PAC must be kept totally separate. Otherwise, it may appear that the C3 is indirectly raising money for the PAC, or that the C3's nominally educational activities are politically motivated. A C3's fundraising letters must therefore (1) be mailed in separate envelopes from any PAC solicitations, (2) be mailed at different times, and (3) make no reference to the PAC. Here are examples of improper coordination:

- ✘ a C3 solicits funds for educational purposes, but encloses a flier containing a pitch for funds from the PAC.
- ✘ a C3 solicits funds for educational purposes, but adds a “P.S.” at the bottom of the page suggesting that donors might also wish to contribute to a PAC.
- ✘ a PAC writes past contributors to inform them of its plans for the coming campaign, adding that its “educational arm” will be contacting them about the C3’s need to raise \$50,000 to train volunteers in voter registration skills.

Improper Control of a PAC Independent PACs

A C3 is barred from being directly affiliated with a PAC, even if the PAC is set up as a nominally independent entity. C3s should therefore take all reasonable steps to avoid identifying themselves with independent PACs. A C3 should not permit a PAC to use a name so similar to its own as to make confusion possible. Avoiding overlapping officers and directors between a C3 and PAC, while not legally necessary, is a practical way of preventing misleading appearances. Officials of a C3 (like other citizens) may serve in their individual capacities on the board of an independent PAC, but they should never be in a position to control the PAC’s decisions; the IRS may well scrutinize any relationship where a C3 and a PAC have more than a small minority of trustees or directors in common. To the extent feasible, a C3 and a PAC should avoid *any* sharing of facilities, whether office space, post

office boxes, or photocopiers. This will finesse some difficult accounting questions, and will help rebut any suggestion that the C3 and PAC are working arm-in-arm.

PACs Linked to C4s

The fact that a C4 has a C3 affiliate does not prevent the C4 from having a PAC. As far as federal elections are concerned, the only time a C3-C4-PAC structure makes much practical sense is where the C4 is the dominant entity; that is, where the C4 owns the facilities and has most or all of the membership and staff. If the reverse were true, the PAC would have very few people to solicit money from, since it would be forbidden to solicit from the C3’s members directly.

If the PAC is linked to a dominant C4 and the C3 is in essence an incorporated bank account, designed to receive tax-deductible contributions for use in educational and charitable work, there is very little risk of an IRS contention that the C3 “controls” the PAC. Thus, there is no problem with the C3 and C4 having overlapping officers, even if they overlap 100%. But a C4 that decides to run a PAC should ensure that its name and the C3’s are readily distinguishable, since a federal PAC must include its corporate sponsor’s full name.

Improper Use of a C3’s Mailing List

Lists of a C3’s contacts and contributors are assets that may be very useful in a political campaign. Therefore, a C3 must exercise great care in handling such lists, especially when it

lets an affiliated C4 or PAC use them. A C3 may not provide free access to its membership list or mailing list to a PAC, a candidate, a political party, or a C4 for use in political activities. That would be an in-kind campaign contribution and, as such, is strictly prohibited.

However, a C3 is not barred from selling or renting its list to such entities (including candidates and campaigns) provided that the following guidelines are strictly observed:

- the C3 should not take the initiative in approaching a candidate or PAC with an offer to sell its list. That would suggest a desire to help the candidate in question.
- the C3 must charge fair market value for its list. That is so even if the C3 provides the list free to other C3 organizations.
- the C3 bears the burden of proving the list's fair market value. A C3 should therefore establish the list's commercial marketability through sales or rentals on arm's-length terms to one or more unrelated, nonpolitical entities. The C3 then can comfortably charge the same price to the candidate or PAC.
- as a matter of prudence, the C3 should not make the first sale or rental of its list to a PAC, candidate, or political campaign. That would suggest that the C3's real motivation is political. Instead, the C3's sales or rentals should be part of an ongoing pattern.
- if a C3 plans to sell or rent its list to one candidate, it must make the list available to all other viable candidates on exactly the same terms. It is wise to explicitly inform the other

candidates of the list's availability.

- it is advisable for a C3 planning to sell or rent its list to use the services of a broker, which avoids the problems potentially caused by having C3 personnel deal directly with PAC or campaign staff. It also helps show that the C3 is interested in selling or renting its list to produce income, not to help candidates. (However, the C3 must ensure that its broker does not apply any partisan tests in deciding whether to rent the list.)
- the IRS takes the position that a C3's net income from the sale or rental of mailing lists (except to other exempt organizations) is subject to unrelated business income tax. The IRS has recently been unsuccessful in pressing this claim in court. Several cases are currently pending.

Use of a C3's Information

A variety of circumstances may arise in which a C3 can further its charitable purposes by making its literature available to candidates. Such materials might be supplied either on the C3's own initiative or in response to a request. The request might come either from a candidate's campaign, or from some entity (such as a C4 or PAC) that supports a candidate. Provided that the following guidelines are observed, the furnishing of such materials is permissible.

A C3 on its own initiative may create a package of materials on issues of concern to it, then send the package to all candidates in a particular campaign. So long as the same package is made available on the same terms to all viable

candidates, there will be no violation of the statutory ban on political intervention. Such a mailing should be approved and coordinated by the C3's management and should not be left to the discretion of individual staff members.

Whether or not the C3 takes the initiative in this way, candidates or their supporters may ask that materials on issues of concern to the nonprofit be supplied to them. The C3 is free to honor such requests, so long as: (1) the materials are already in existence and (2) the C3 would have provided the same package of materials on the same terms to any other candidate and to any member of the requesting public. Thus, if the C3 would supply one copy of a report or study free of charge to a newspaper reporter, it may supply one copy of that document free of charge to a candidate. If the C3 would generally charge a fee, the candidate must be charged the same fee. If a C3 provides materials in response to one candidate's request, it is generally a good idea for the C3, on its own initiative, to offer the same package of materials to other viable candidates.

While a C3 is free to furnish reports and other preexisting documents to a candidate or a candidate's supporters, the C3's employees may not, on office time or at the C3's expense, do special or made-to-order research for a candidate. Thus, a C3 may not draft summaries or elaborations of its documents, search its files for documents that would not routinely be sent to the general public, or undertake to review a candidate's upcoming speech or position paper. The C3, in short, must

limit itself to providing documents that already exist and must supply such documents on the same terms on which they would be supplied to members of the general public.

Avoiding Sloppy Accounting Procedures

A key pitfall to guard against in C3-C4-PAC combinations is the danger that C3 money will slosh over into the PAC or into the C4 for use in political activities. C3 money must *never* be diverted to a PAC. Although C3 money can be used to fund a C4's educational and charitable activities, tax-deductible contributions may not be used, directly or indirectly, for political purposes. It is advisable to designate a C4 staff member to take special responsibility for the C3 and to monitor compliance with the special tax code rules that govern it.

At a minimum, a C3 and a related C4 must follow strict accounting procedures to keep track of their separate income and expenses, always dealing with each other on arm's-length terms. A C3 may properly fund particular activities of a C4 that the C3 could undertake directly, such as nonpartisan educational (as opposed to electioneering) activities. But the C3 may not pay general expenses of the C4, i.e., expenses not properly allocable to specific C3-type work.

Additional Resources

INDEPENDENT SECTOR

Offers many resources on nonprofit lobbying, including *Power, Politics, and Nonprofits: A Primer on Tax-Exempt Organizations, Campaign Finance and the Law, The Nonprofit Lobbying Guide, Ten Reasons to Lobby for Your Cause*; and other resources on nonprofit work in public policy.

1200 Eighteenth Street, NW, Suite 200,
Washington, DC 20036
202-467-6100 ■ 888-860-8118 (publications)
■ www.IndependentSector.org

League of Women Voters

Offers publications and resources to help citizens get involved in elections. The League of Women Voters Educational Fund is an example of a 501(c)(3) organization's voter education efforts (and the League of Woman Voters is an example of a 501(c)(4) counterpart).

1730 M Street, NW, Washington, DC 20036
202-429-1965 ■ www.lwv.org

Council on Foundations

Offers advice specifically for foundations in *Foundations and Lobbying: Safe Ways to Affect Public Policy*.

1828 L Street, NW, Suite 300,
Washington, DC, 20036
202-466-6512 ■ www.cof.org

IRS Tax-Exempt Organizations Website

Provides extensive information on election year issues for nonprofits.

www.irs.ustreas.gov/prod/bus_info/ea/

U.S. Chamber of Commerce

Produces *The Congressional Handbook*, a directory of the members of Congress. Contact information and a searchable database is also available online.

1615 H Street, NW, Washington, DC 20062
202-463-5604 ■ www.uschamber.org



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