

Executive Summary of
**THE REAL RULES: Congregations and IRS
Guidelines on Advocacy, Lobbying, and Elections**

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IMPORTANT DISCLAIMER

This resource is not intended to be formal legal advice; nor should it be used in place of legal counsel. It is intended to clarify Internal Revenue Service guidelines as they relate to religious organizations in the hope that more congregations will (1) choose to become involved in working for justice through advocacy, community organizing, and public education; and (2) know when it is important to seek legal advice. If you have questions, please consult the full version of *The Real Rules* at www.uua.org/uuawo.

THE THREE SIMPLE RULES

The IRS regulations on the political activities of congregations can be summarized in three simple rules:

1. **Without limits on time, effort and expense**, congregations and their representatives may work publicly on moral and political issues by advocating positions in the media and to elected officials; educating and mobilizing congregants and the general public, and working in local coalitions or partnerships on issues of social justice. Congregations can also perform certain activities to educate and register voters if they are done in a non-partisan manner.
2. **Within narrow limits on time, effort and expense**, congregations and their representatives may engage in lobbying—defined by the IRS as advocating for or against specific pieces of legislation—as an "unsubstantial" portion of an organization's activities. The IRS has not provided a guideline for what is "unsubstantial," but experts generally agree that up to 5% is acceptable. Since the definition of activities includes the total amount of money, staff, and volunteer time that goes into running the organization, most congregations will never come near the 5% line.
3. **There is a total limit** on partisan political activity. Congregations and their representatives can do nothing that advocates for or against candidates for public office or political parties. This includes fundraising on behalf of candidates and donating meeting space, among other things. Election-related activities such as candidate questionnaires and forums are acceptable so long as all major candidates are invited to participate and they cover a broad range of issues.

Please Note:

The restrictions against partisanship described here apply only to a congregation as a legal entity, or to a person or group speaking in the name of the congregation. A minister or congregation member may freely make partisan statements as an individual. However, if they are identified by or likely to be associated with the congregation, they should make it clear that they are speaking only in their own name.

ADVOCACY and LOBBYING

General Issue Advocacy.

There is no limit on the amount of time, effort, or expense congregations may work on general political issues such as civil rights, civil liberties, economic justice, the environment, or peace. This includes: advocating positions in the media and to elected officials; educating and mobilizing congregants and the general public, and working in local coalitions or partnerships on issues of social justice.

Influencing Legislation (Lobbying).

In general, no organization, including a congregation, may qualify for 501(c)(3) status if a substantial part of its activities is “attempting to influence legislation” (commonly known as lobbying). “Legislation” includes (1) Action by Congress, any state legislature, any local council, or similar governing body, on acts, bills, resolutions, or similar items (such as legislative confirmation of appointive offices including judges); and (2) Action by the public in a referendum, ballot initiative, constitutional amendment or similar procedure.

Measuring Lobbying: The Substantial Part Test.

Whether or not a congregation’s attempts to influence legislation constitute a substantial part of its overall activities is determined on the basis of all the pertinent facts and circumstances in each case, including the time (by both compensated and volunteer workers) and the expenditures devoted to the activity by the organization. Although the IRS has not defined what is “substantial,” court cases and many legal advisors have identified 5% as the general rule of thumb. The IRS has also noted that where 16 to 20% of total activities have been devoted to lobbying, those activities have generally been considered “substantial.” Since the definition of activities includes the total amount of money, staff, and volunteer time that goes into running the organization, most congregations will never come near the 5% line.

Lobbying During Election Years.

If a congregation has a history or record of criticizing legislators, lobbying them, and working to hold incumbents accountable, it may continue to do so during an election year. However, close to an election, the IRS may view a sudden entry into the political arena as partisan. A track record of consistent activity is the best safeguard against these charges.

Nonpartisan Analysis.

Congregations may sponsor and distribute to their members, the general public, or governmental bodies, a “nonpartisan analysis, study, or research” of legislation (including ballot measures, referenda, state constitutional amendments, city charter amendments, etc.). If the analysis urges readers to take action, such as by supporting particular legislation (which is permissible), it counts as lobbying so be sure to include the money and time spent on it in your substantial part calculations. Purely informational analysis that do not urge action are not subject to any limitations.

ELECTORAL ACTIVITIES

All 501(c)(3) organizations are absolutely prohibited from directly or indirectly participating in any political campaign for or against any candidate for elective public office. Contributions to political campaign funds or public statements of position (verbal or written) made on behalf of the congregation for or against any candidate for public office clearly violate this prohibition and may result in penalties.

Congregations cannot:

- Issue letters of endorsement or opposition printed on congregation letterhead; distribute campaign literature at congregational events; display campaign signs on congregation property (including at a table during coffee hour), or engage in any other activities that could be construed as endorsing or opposing a candidate.
- Contribute money to candidates, solicit contributions on their behalf, donate to candidates' political action committees, or create political action committees of their own. Individuals may not fundraise for candidates at the congregation (except in compliance with the guidelines in the next section), or use congregational letterhead or other official materials for such purposes.
- Make in-kind contributions to candidates or parties such as selling or renting of mailing lists, renting office or meeting space, or accepting paid political advertising. Any good, service, or facility offered for any partisan purpose must be equally available to all candidates/parties and the general public at the organization's customary and usual rates.

Candidates Speaking at the Congregation.

A congregation may invite political candidates to speak at events without jeopardizing its tax-exempt status if (1) It provides an equal opportunity to other candidates seeking the same office; (2) it does not indicate any support of or opposition to the candidate (this should be stated explicitly when the candidate is introduced and in communications concerning the candidate's attendance); and (3) No political fundraising occurs.

Speaking as a Non-Candidate.

A congregation may invite a single political candidate (including members of the congregation) to speak in a **non-candidate** capacity provided that (1) the individual speaks only in a non-candidate capacity (such as being a current office holder or expert on some issue); (2) Neither the individual nor any representative of the congregation makes any mention of his or her candidacy or the election; and (3) No campaign activity occurs in connection with the candidate's attendance.

Forums, Questionnaires, and Voter Guides.

Congregations may hold public forums, send candidate questionnaires, and create voter guides provided that they are done in a strictly non-partisan manner. Congregations should avoid voter guides produced by outside groups, as many hold a different type of tax-exempt status and there is no guarantee that of accuracy. If your congregation plans to do candidates forums, questionnaires, or voter guides, make sure that:

- All candidates (or at least all major candidates) are invited to participate;
- Questions for the candidates are prepared and presented by an independent nonpartisan panel;
- The topics discussed by the candidates cover a broad range of issues that the candidates would address if elected to the office sought and are of interest to the public;

- Each candidate is given an equal opportunity to present his or her views on the issues discussed;
- Candidates are not asked to agree or disagree with positions, agendas, platforms or statements of the congregation; and
- Comments or questions from the moderator do not imply approval or disapproval of any or all the candidates.

Voter Registration and Get-Out-The-Vote (GOTV) Drives.

Congregations may sponsor nonpartisan voter registration drives and Get-Out-The-Vote activities. It is generally acceptable to target voter registration and GOTV efforts at or in communities with historically low turnout. All registration and mobilization activities must be done without any reference to candidates or parties.

Congregation may use slogans such as:

- “The next election will set the country’s course on civil rights, health care, welfare, jobs, taxes, support for the arts and the environment. Your vote counts. Register now.”
- “Challenge authority. You’re 18, and you haven’t registered to vote? Why not here? Why not now?”
- “You can have an impact on the decisions affecting your life. Register to vote now.”
- “The future of affirmative action in this state will be decided next November. Register to vote today.”
- “Housing. Human Services. Jobs. You count. Register and vote.”

Congregation may **not** use slogans such as:

- “Vote green. Register Here.”
- “Let’s get out the pro-life (or pro-choice) vote. Register here.”
- “Support family values. Register Now”
- “Budget cuts are reducing the services provided by this agency. Register to vote here, and let the candidates know you won’t take it anymore”

IRS Enforcement and Consequences.

Generally, IRS inquiries about potential violations of the political activity prohibition by congregations are initiated based upon facts reported by the media or complaints submitted by third parties. The IRS does not have unfettered discretion to investigate activities by congregations, including violations of the political activity prohibition, and must obtain high-level authorization before doing so. Possible consequences include the imposition of an excise tax on inappropriate activities and revocation of non-profit status. Both are extremely rare.

FOR ADDITIONAL INFORMATION

Read the full version of *The Real Rules* at www.uua.org/uuawo.

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Tax Guide for Churches and Religious Organizations. Publication 1828 (Rev. 7-2002).
<http://www.irs.gov/pub/irs-pdf/p1828.pdf>