

Election Year Issues for Charities

JFNA webinar

February 26, 2020

Election Issues for Charities

- 2020 Elections: key time for charitable organizations and their constituencies
- Highlight some of the basic rules and best practices regarding advocacy by public charities and their key people
- “Spread the gospel” to your Federation and affiliated agencies

Election Issues for Charities: Overview

- 2020 Election: Opportunities and challenges
- Advocacy: should we be involved?
- Components of Advocacy
- Do's and Don'ts
 - Rules—legal and otherwise
 - People
 - Facts and circumstances

The conflict: can we get involved?

- Too many “charitable leaders” (lay and professional) struggle with question of involvement in advocacy
 - Tax and legal definitions are important but provide significant room for activity
 - Will we offend key segments of the donor base?
- Today’s “toxic” political climate
 - Key *issues* demand our involvement
 - Key *programs* at risk

Advocacy 101: Four key topics

- Organization's advocacy strategy: do you have one?
- Advocacy and lobbying: know the difference
 - Legal definitions
 - What is permissible?
- Elections: do's and don'ts
- Organizations: officials, employees, outsiders

Advocacy Strategy

- Core feature of mission statement
- Review strategy regularly including policy priorities, target audiences, roles and responsibilities
- Key components
 - What?
 - Why?
 - Who?
 - How?
 - When?

Advocacy: Organization's Public Voice

- Advocacy: large number of permissible activities which include *lobbying* and *election engagement*
 - Public education, position papers, voter registration...
 - Activities that elevate voice of the organization with policymakers and the public
- Charities *should* take positions on public policy issues
 - Avoid issue advocacy that functions as equivalent of political campaign intervention/endorsement

Advocacy: Some Do's and Don'ts

- “Tell Senator X to vote against Bill 123” vs.
“Because Senator X voted for Bill 123, we encourage you to vote against him”
- “We condemn Representative Y’s abhorrent statement that seeks to divide our community” vs.
“We condemn Representative Y who is running for reelection this November”

Advocacy: Lobbying-yes you can!

- Charities permitted to “lobby freely so long as lobbying is within generous specified limits” (IRS website)
 - May not be “substantial part” of activities of public charity
- IRS and statutory definition
 - Lobbying:
 - Attempt to influence *legislation* by stating specific position to legislators or other government employees who participate in formulation of legislation (DIRECT)
 - Urge members or general public to contact legislators with position on *specific legislation* (GRASSROOTS)
 - Substantial part test based on facts and circumstances or by electing statutory limit (up to \$1 million)

Lobbying: Narrow Definition

- Organization M writes to Congresswoman requesting she contact agency reviewing a proposed regulation

NOT LOBBYING

- Agency O prepares a paper (and sends to legislator) on particular social service issue not referring to specific legislation or legislative proposal

NOT LOBBYING

- Federation P's newsletter contains editorial with views on specific legislation but does not encourage readers to take action on the bill

NOT LOBBYING

- Same as above but includes list of committee members that will consider the bill

LOBBYING

- JFNA opposes President's nominee for Supreme Court justice and urges public to contact their Senators to vote no

LOBBYING

- JCRC endorses housing authority proposal to purchase a particular track of land for new affordable housing project

NOT LOBBYING

Election Do's and Don'ts

- Public charities cannot directly or indirectly participate in or intervene in campaign for or against any candidate for *any* political office
- Variety of permissible election activities but need to be viewed in context of what, how, and when

Elections: Statutory Rules

- Limited by Internal Revenue Code and defined by IRS
 - Prohibition against endorsing or opposing any candidate (Netanyahu included!)
 - *Johnson Amendment* still in law despite President Trump's claims
 - Executive Order (May, 2017)—does not ease amendment restrictions—DOJ
 - IRS enforcement virtually non-existent
 - We should answer to a higher standard

Elections: what is permissible?

- Non-partisan election activities permissible
 - Voter registration, balanced issue education and candidate forums
- Candidate appearances
 - Fundraising prohibited
 - Nonpolitical events: time, place and purpose
- Organization resources: building, mailing list, web site

Organizations: officials, employees and outsiders

- Endorsement prohibition applies to organizations not individuals *acting in their private capacity*
- Organizations act through individuals
 - Lay and professional leaders
 - Organization resources: newsletter, meetings
 - Employees: actions can be attributed to organization
 - Outside speakers: authorized by organization?
- Need to be vigilant during election season: facts & circumstances most relevant to determination

Elections: Examples

- Federation Board Chair D at annual meeting states “it is important to vote this November and support Candidate X, who reflects our values

CAMPAIGN INTERVENTION

- Minister C attends press conference at Candidate V’s headquarters and states candidate should be re-elected. Minister does not say he is speaking on behalf of his church

NOT CAMPAIGN INTERVENTION

- Organization M posts unbiased nonpartisan voter guide on website and includes links to each candidate’s official campaign website

NOT CAMPAIGN INTERVENTION

Election: Examples

- Rabbi S invites Senate candidate X to speak at Shabbat service where candidate asks for votes and help with turnout. Rabbi invites no other candidate to speak during the campaign

CAMPAIGN INTERVENTION

- Federation invites Congresswoman N to attend groundbreaking ceremony for new wing of building and neither federation or congresswoman make reference to election campaign

NOT CAMPAIGN INTERVENTION

- Issue #1 is prominent in election campaign between Candidate A who supports and Candidate B who opposes. At annual fundraising event Federation executive urges donors to “use your vote next week” to speak out on Issue #1

CAMPAIGN INTERVENTION

Elections: Note to Speakers

The Federation, like all public charities, is absolutely prohibited from supporting or opposing candidates for elected public office. As such, it is important that to the extent that your presentation could be interpreted to support or oppose any candidate or public party, it is important that you state that such views are your own or those of your organization and not those of the Federation. The Federation does not take positions supporting or opposing candidates for public office.

For More Information:

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