



# Political Law Considerations for Faith-Based Nonprofit Organizations

Napa Legal Annual Good Counselor Project National Lawyers Conference



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# Tax-Exemption Issues



Prohibition on Campaign Intervention



Election-Related Activity



Educating Candidates



Personal Political Activity



From the Pulpit

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# Campaign Intervention

Prohibited for 501(c)(3) Organizations

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# Tax Code: Limits on Campaign Intervention

## 501(c)(3): Public Charity

Campaign intervention **prohibited**

- No endorsements
- No contributions
- No communications to support or oppose candidates, parties, or groups of candidates

## 501(c)(4): Social Welfare

## 501(c)(6): Trade Association

Campaign intervention **limited**

- May not be primary activity
- May endorse candidates
- May contribute to candidates (if allowed under state law)
- May make communications to support or oppose candidates
- May form a PAC

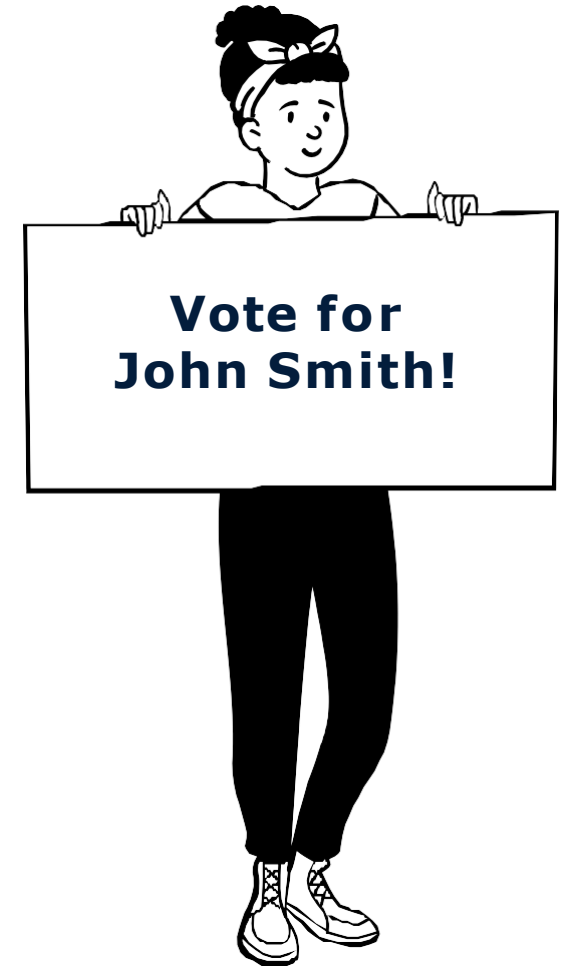
# Impermissible 501(c)(3) Political Activity: Campaign Intervention

Basic concept—**participation or intervention** in a **political campaign** on behalf of or in opposition to a **candidate** or group of candidates at the **local, state, or federal** level

- For example, publication or distribution of written statements or the making of oral statements on behalf of or in opposition to a candidate
- Intervention can be direct or indirect

The IRS uses a facts and circumstances test

- Alleged intervention will be evaluated in context
- Specific references to candidates may be considered, as well as scope of content, format, audience, subtext, and other subjective factors
  - *See* IRS Revenue Ruling 2007-41



# Praising or Criticizing Incumbents in Election Year

## Do

- ✓ Focus only on official actions (votes; bills introduced)
- ✓ Time communications to coincide with policy actions (specific vote; administrative hearing; bill introduction)
- ✓ Include legislative calls to action (“contact Sen. Smith”)
- ✓ Use nonpartisan criteria to choose the incumbents featured and the audience

## Avoid

- ✗ Referring to the election, voting, or removing someone from office
- ✗ Criticizing personal character
- ✗ Commenting on incumbents for whom your issue is a defining campaign issue or point of contention among the candidates or comparing opponents

# Praising or Criticizing Incumbents in Election Year



**Healthcare costs are rising.**

**He voted to keep premiums high.**

**Tell him to pass new subsidies.**

**Call. 555-555-5555**

 **Healthy 501(c)(3), Inc.**

Paid for by Healthy 501(c)(3), Inc.



**Healthcare costs are rising.**

**He sails around on a yacht while you suffer.**

**Does he even care about real people?**



 **Healthy 501(c)(4), Inc.**

Paid for by Healthy 501(c)(4), Inc.

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# Permissible Election Related Activity

Nonpartisan and balanced

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## Permissible 501(c)(3) Election Activity: Nonpartisan and Unbiased with Respect to Candidates

### Voter Registration and GOTV

- Nonpartisan
- No mention of candidates or mention all candidates in given race
- Must not target voters of certain party, directly or indirectly

### Candidate Questionnaires & Voter Guides

- All candidates for office sent questionnaire
- Unbiased structure
- No endorsement
- No pledge of support
- No grading responses (+/-)

### Legislative Voting Records

- Must be regular activity of org, not timed with election (e.g., end of each legislative session)
- Track variety of issues
- Include all legislators, do not include non-incumbent candidates
- Avoid editorializing

# Candidate Appearances—Unrelated to Candidacy

- Appearances unrelated to candidacy are OK!
  - e.g., Incumbent official, expert, community leader
- No mention should be made of the election or candidacy before or during the event by the candidate or sponsoring organization
  - Invitations and introductions should refer to official/non-candidate role only
  - Notify speakers in advance of ground rules
  - Consider disclaimers at event (written materials, announcement)
- Do not work with campaign staff to organize
- Do not allow political fundraising

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# Educating Candidates

Interacting with Candidates

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# Educating Candidates: Do's and Don'ts

May urge candidates to support policies (“lobbying” candidates)

501(c)(3) may not ask candidates to take a pledge (tantamount to endorsement)

May provide policy papers and other materials (preferably available to the public)

Should provide material to all candidates

Should not create content at the request of candidates, unless it will be shared by all

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# Personal Political Activity

Separate from the Organization

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# Personal Political Activity

501(c)(3) directors, employees, and volunteers do not lose the right to engage in personal political activities



BUT consider:

Would observer believe statements/activities are made on behalf of entity?

Did the leader or employee use entity's resources that could be campaign intervention (tax code)?

Did the leader or employee use organization resources that could be a contribution (campaign finance)?

# Personal Political Activity (continued)

- **Consider establishing a policy governing political activities for leaders and staff:**
  - **No political statements on behalf of the organization**
    - Official functions
    - Official newsletters, website, or social media
    - Letterhead
  - **No use of the organization’s facilities or resources for personal political activities**
    - No political activities on work time
    - Computers, telephones, photocopiers, staff support, etc.
  - **Other policies depend on mission and culture**
- **Ability to regulate off-duty activity is governed largely by state employment laws, which vary**



# Executive Endorsements

- May endorse in personal capacity
- May not use 501(c)(3) resources
- May use title for identification purposes
- Must disclaim organization interest



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# From the Pulpit

Can a church endorse a candidate?

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# National Religious Broadcasters v. Bessent

## Attempted Settlement

Settlement between IRS and plaintiff would have allowed

- bona fide communications internal to a house of worship
- including communications between the house of worship and its congregation in connection with religious services
- communicated through customary channels on matters of faith

**BUT:** district court held that it lacked jurisdiction and could not enforce the settlement

**Appeal:** NRB has announced plans to appeal to the Fifth Circuit

## Forthcoming Guidance?

“As many Americans gather to observe Holy Week and Passover, President Trump and this administration continue to protect religious freedom as a fundamental right in principle and in practice as our laws are applied. Treasury and the IRS will provide additional clarity and guidance to houses of worship that reflect these ideals and uphold the First Amendment.”

--Scott Bessent, Treasury Secretary



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# Political Law Considerations for Faith-Based Nonprofit Organizations

Napa Legal Annual Good Counselor Project National Lawyers Conference

**Tyler Martinez**

April 23, 2026 | Washington, D.C.

# Two Governing Regimes for One Organization: IRS vs. FEC

| IRS (Tax) Rules   | FEC (Campaign Finance) Rules   |
|---|--|
| <p><b>SCOPE</b><br/>IRC governs tax-exempt status vis-à-vis political campaign activity.</p> <p><b>PENALTIES</b></p> <ul style="list-style-type: none"> <li>• Excise taxes (on both the org and the managers) under 26 U.S.C. § 4955 — IRS levies immediately</li> <li>• Risk of permanently losing tax exemption</li> </ul> <p><b>STANDARD APPLIED</b></p> <ul style="list-style-type: none"> <li>• Eleven-Factor “Facts and Circumstances” Test</li> <li>• No magic words need</li> <li>• Asks whether the organization has intervened in a “political campaign”</li> <li>• Lobbying rules broader than typical use of “lobbying” in everyday speech</li> </ul> | <p><b>SCOPE</b><br/>Federal Election Campaign Act (FECA) governs federal and state/local political contributions and federal expenditures/IEs/ electioneering communications and requires disclosure/reporting.</p> <p><b>PENALTIES</b></p> <ul style="list-style-type: none"> <li>• Civil fines (FEC)</li> <li>• Criminal referral for willful violations (DOJ)</li> <li>• Fines and imprisonment</li> <li>• Litigation risk</li> </ul> <p><b>STANDARD APPLIED</b></p> <ul style="list-style-type: none"> <li>• Contribution/expenditure → anything “of value”</li> <li>• IE → “express advocacy” (magic words or equivalent)</li> <li>• electioneering communication → broadcast/cable/satellite in certain time frames</li> </ul> |

# Contributions and Expenditures Under FECA

- **“Corporation” includes advocacy organizations and ministries that operate under IRC § 501(c)(3) and § 501(c)(4).**
  - Faith-based nonprofits that are incorporated for tax and liability purposes under state law are corporations for FECA purposes.
- **What Is a “Contribution”?**
  - Examples: cash, in-kind goods and services, free/discounted use of facilities and mailing lists when there is normally a charge, use of staff time to plan a political campaign event.
- **What Is an “Expenditure”?**
  - IEs most relevant for 501(c)(3)/(c)(4) organizations: spending on communications expressly advocating the election or defeat of a federal candidate.

# “Major Purpose” Under FECA

- **“Political Committee” = Two-Part Test**

- Any entity or organization (1) receiving contributions or making expenditures exceeding \$1,000 in a calendar year, (2) whose major purpose is federal campaign activity.
  - **Amount:** >50% of spending? (but debated – and different from IRS rules)
  - **Period:** Unsettled! One year? Two-year election cycle?
- Must register as a federal political committee: subject to contribution limits, source prohibitions, and FEC reporting of all financial activity.

- **Faith-Based Org Risk**

- A voter guide program, candidate endorsement campaign, or GOTV effort that dominates the organization’s activities and spending in an election cycle can subject the organization to FEC scrutiny.
- Often, optics and news reports are what trigger complaints, regardless of whether they have merit.
- The process is the punishment.

# Practical Applications for Faith-Based Nonprofits

## ENDORSEMENTS

- *National Religious Broadcasters v. IRS* — attempted settlement and promised future guidance— shows a possible shift on church endorsements under tax law.
- Changed IRS enforcement posture only: FEC rules on corporate endorsements are unchanged.
- Endorsements permitted if not coordinated with candidate and disbursements for press release/conference are *de minimis*.

## VOLUNTEER ACTIVITIES

- Individuals volunteering on their own time and using their own resources are generally not a corporate contribution.
- Organization directing or compensating staff time creates FECA exposure.
- Social media: boosting a candidate's post or running targeted digital ads from an organizational account are potential expenditures subject to FEC rules.

## CANDIDATE APPEARANCES

- Apply a consistent, neutral, written policy adopted in advance.
- Prohibit candidate distribution of campaign materials at events/on premises.

## VOTER REGISTRATION & GET OUT THE VOTE

- Generally permissible for 501(c)(3)s and 501(c)(4)s.
- Cannot be coordinated with a candidate or their campaign.
- No express advocacy.
- Must be made available without regard to voter's political preference; efforts targeted at demographics that correlate with partisan preference invite scrutiny even with neutral language.
- Providing rides on Election Day permissible if offered equally.
- Document neutrality in writing.

# Foreign National Issues

**52 U.S.C. § 30121 prohibits foreign nationals from making contributions in connection with ANY U.S. election. Knowingly accepting such funds is also illegal. Foreign nationals are also prohibited from making expenditures in connection with federal elections.**

- **International Ministries and Foreign Donors**

If a global church partner or foreign national donor funds election-related activity, both the donor and the receiving organization can face criminal liability.

- **Scope of the Prohibition**

The ban covers contributions, expenditures, independent expenditures, and electioneering communications, not just cash to a candidate. A foreign national who participates in decisions about U.S. election-related spending may be “directing” a prohibited contribution even without writing a check.

- **Due Diligence Is Not Optional**

Verify donor citizenship and residency status before any election-related expenditure. Firewall international funds from U.S. advocacy activity. This cannot be done retroactively — need to build the process before election season begins.

- **Criminal Exposure**

Willful violations carry up to five years imprisonment for both the foreign national donor and the receiving organization. Willful blindness is not a defense. Any FEC complaint — even one that does not result in enforcement — creates public reputational exposure.

# Key Takeaways

## 1. Document Everything

A neutral written policy, consistently applied and documented before any election-season activity, is your best defense in an FEC investigation or complaint proceeding. Build the paper trail first; you cannot reconstruct it after a complaint is filed.

## 2. Corporate Status Matters

Faith-based nonprofits incorporated under state law are corporations under FECA. The 2025 IRS shift on church endorsements did not change FECA.

## 3. Beware the Blurry Line between Issue Advocacy and Express Advocacy

Timing, context, and exact language are all relevant. When in doubt, have counsel review before publishing or any election-related communication.

## 4. Facilities and Staff Time for Partisan Political Purposes can be Contributions

An unreported in-kind contribution — a free or discounted facility rental when there is typically a charge, use of a mailing list, or directed staff time — can cost far more in penalties than the underlying benefit was worth.

## 5. Foreign National Rules Can Lead to Criminal Liability

Any international connections require proactive due diligence before election season. Willful blindness is not a defense, and criminal exposure attaches to both the donor and the receiving organization.



[ntu.org/foundation](https://ntu.org/foundation)



# LOBBYING ISSUES FOR NONPROFITS

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April 23, 2026



# What We'll Cover

1. Federal Lobbying Disclosure Act of 1995
2. IRS lobbying limits
3. Foreign Agents Registration Act of 1938

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# **Federal Lobbying Disclosure Act**



# Lobbying Disclosure Act of 1995: Overview

- Nonprofits triggering LDA disclosure register with the US House and Senate
- Lobbying organizations file quarterly and semiannual reports
- Individual lobbyists also file separate semiannual reports

# Lobbying Disclosure Act of 1995: Who is a lobbyist?

- 2 or more lobbying "contacts"
  - Oral or written communication to covered official regarding:
    - Formulation, modification, or adoption of federal legislation, rule, regulation, executive order, or other federal program, policy, or position;
    - Administration or execution of federal program or policy; or
    - Nomination or confirmation of a person subject to Senate confirmation
- 20% or more of time spent in a 3-month period on lobbying "activities"
- > \$16,000/quarter in spending on lobbying activities

# Lobbying Disclosure Act of 1995: Who is a covered official?

## Legislative Branch

- Senators and Representatives
- Elected officers of both Houses
- Employees of Members, committees, leadership staff, working group or caucus
  - Includes employees in state and district offices
- Legislative branch employees required to file public financial disclosure forms with House/Senate

## Executive Branch

- President
- Vice President
- Officers/employees in the Executive Office of the President
- Individuals serving in positions in Levels I through V of the Executive Schedule
- Schedule C appointees
- Uniformed services O-7 and above (brig. generals, rear admirals and above)

# Lobbying Disclosure Act of 1995: What is NOT a lobbying contact?

- Administrative requests (e.g., status requests or requests for meetings)
- Communications made in speeches, publications, or congressional testimony
- Information provided in writing in response to an oral or written request by a covered official for specific information
- Communications made in response to a notice in the Federal Register or on the record as part of a public proceeding
- Communications made by public officials (e.g., state or local government employees) in their official capacities

# Lobbying Disclosure Act of 1995: Lobbying Activities

- **Lobbying contacts**, AND
- Efforts **in support of** lobbying contacts
  - Preparation, planning, strategizing for lobbying contacts
  - Research and other background work intended at the time it is performed for use in lobbying contacts
  - Coordination of lobbying activities of others
- Contacts that are NOT lobbying *contacts* may still be lobbying *activity* if they are made in support of actual lobbying contacts
  - For example, administrative time spent scheduling lobbying contacts would not be considered a lobbying contact, but would be considered lobbying activity

# Lobbying Disclosure Act of 1995: Registration

- Registration required within 45 days
- Registration must identify:
  - General subject of lobbying activity
  - Each employee expected to act as a federal lobbyist
  - Any employee who served as a covered official within 20 years before acting as a lobbyist, and the position served

# Lobbying Disclosure Act of 1995: Quarterly LD-2 Reports

- Quarterly LD-2 reports due on January 20, April 20, July 20, and October 20 (or next business day)
- Quarterly reports must disclose:
  - Specific issues/legislation on which lobbyists engaged in lobbying activity
  - Federal agencies and Houses of Congress contacted by lobbyists
  - Employees who acted as federal lobbyists
  - Total lobbying expenses, using LDA or IRC definitions

# Lobbying Disclosure Act of 1995: Quarterly LD-2 Reports

- Level of detail for issue disclosure
  - Detail should include bill names, bill numbers, and identification of particular provisions within the bill
  - The key is to give information that is adequate, standing alone, to inform the public about the issues on which you performed lobbying activities
  - Practice tip: If an issue is stale, take it off the report
- Keep documentation in case of GAO audit

# Lobbying Disclosure Act of 1995: Semiannual LD-203 Reports

- Organization *and* individual lobbyists file LD-203s
- Reports due July 30 and January 30 (or next business day)
- Lobbyist must file even *after* leaving the organization or terminate registration, if he or she was still a registered lobbyist at any point during 6-month reporting period

# Lobbying Disclosure Act of 1995: Semiannual LD-203 Reports

## **Each filer must disclose:**

- Political committees established or controlled by filer
- Political contributions  $\geq$  \$200 in the aggregate to federal candidates, leadership PACs, parties (not corporate PACs)
- Payments made to events honoring covered officials
- Payments to entities named for covered legislative branch officials (or to a person or entity in recognition of such official)
- Contributions to entities controlled or designated by covered officials
- Contributions to conferences, retreats, meetings held by covered officials or in covered officials' names
- Contributions  $\geq$  \$200 to Presidential library foundation and Presidential Inaugural Committee

# Lobbying Disclosure Act of 1995: Semiannual LD-203 Reports

- Each filer (registrant *and* individual lobbyists) must certify semi-annually that the filer:
  - has read and is familiar with congressional gift and travel rules, and
  - has not provided, requested, or directed a gift, including travel, to Member/staff with knowledge that the gift would violate those rules.
- Registered lobbyists are **independently liable** for violations of congressional gift rules

The background features a light gray gradient with several overlapping, semi-transparent circles in various shades of gray. A single circle with a dotted red outline is positioned in the upper-left quadrant. The text 'IRS Limits on Lobbying' is centered in a bold, red, sans-serif font.

# IRS Limits on Lobbying



# Tax Code Lobbying Definitions

- Direct legislative lobbying
  - Communication with a legislator, Hill staff, or any government official participating in the legislative process
  - Expressing a view about specific legislation (note: you don't need a specific *bill* to trigger this)
- Grassroots lobbying
  - Communication with the public
  - Expressing a view about specific legislation
  - Including a call to action

# Public Charities: Lobbying Limits

- Legislative lobbying by 501(c)(3)s that are *public charities* must be an insubstantial part of its overall activities.
  - No bright line, but 5% has been found to be ok while 16-20% was found to be substantial
- Alternative: make the 501(h) election. The 501(h) expenditure test provides precise legislative lobbying limits and clear definitions:
  - 20 percent of the first \$500,000 of exempt purpose expenditures, plus
  - 15 percent of the next \$500,000 of exempt purpose expenditures, plus
  - 10 percent of the next \$500,000 of exempt purpose expenditures, plus
  - Five percent of the remaining exempt purpose expenditures up to a total cap of \$1 million.

# Private Foundations: No Lobbying

- Private foundations cannot engage in ANY legislative or grassroots lobbying.
  - They are subject to a steep tax on any lobbying expenditures they do incur (this includes activity of foundation consultants)
- Private foundations *may* engage in issue advocacy. They may also:
  - Produce nonpartisan analysis, studies, or research;
  - Give technical advice or assistance at the request of a governmental body.
  - Discuss broad social or economic issues
  - Influence agency rulemaking
  - Lobby in *self-defense*: legislation that would impact the foundation's "powers and duties," tax-exemption, or deductibility of contributions

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# **Foreign Agents Registration Act**



# FARA – Overview

- Passed in 1938 to compel disclosure of activities on behalf of foreign interests within the U.S. on eve of World War II
- Amendments in 1960s boosted the law's lobbying focus
- Can apply broadly – e.g., activities of U.S. charities
- Enforcement practices have changed in recent years, but the law is broad and open to aggressive enforcement

# FARA – Scope and Registration Triggers

FARA requires registration by agents of foreign principals who engage in registrable activities to whom no exemption applies.

- Foreign principal → a foreign government, political party, or individual, or an entity having its principal place of business in a foreign country or organized under the laws of a foreign country
- Agent of a foreign principal → anyone who acts at the order, request, or under the direction or control of a foreign principal
- Registrable activities\_→
  - Engaging in political activities for the foreign principal in the US; or
  - Acting as a public relations counsel, publicity agent, or political consultant for the foreign principal in the US; or
  - Soliciting or dispensing money for the foreign principal in the US; or
  - Representing the foreign principal before any US agency or official

# FARA – Exemptions

FARA registration is ***not*** required for persons engaging only in **specific types of humanitarian relief.**

- Soliciting or collecting funds to be used only for medical aid or assistance
- Soliciting food and clothing to relieve human suffering

FARA registration is ***not*** required for persons engaging only in **bona fide religious, scholastic, academic or scientific pursuits, or the fine arts.**

- Exemption does not apply when the person engages in political activities

FARA registration is ***not*** required for **certain Lobbying Disclosure Act registrants** who engage in lobbying activities on behalf of a foreign principal.

- Foreign principal **cannot** be a foreign government or foreign political party, and a foreign government or foreign political party **cannot be** the principal beneficiary of the lobbying activities

# FARA – As Applied to Charities

- U.S. religious organization required to register for helping prepare banners for foreign attendees attending the March for Life, because it would become a “publicity agent” under FARA. <https://www.justice.gov/nsd-fara/page/file/1232921/dl?inline=>
- U.S. conservation group required to register when it accepted funds from a foreign government to change corporate product-sourcing practices in alignment with government policy objectives. <https://www.justice.gov/nsd-fara/page/file/1287616/dl?inline=>.

# FARA – Considerations for Nonprofits

Might I have an agency relationship with a foreign principal?

- Do I have no clear, genuinely independent interest of my own in the matter?
- Am I acting on specific instructions or accepting specific tasks from a foreign person?
- Are my activities being subsidized or supported logistically by the foreign person?
- Do my grant agreements indicate specific obligations to the funder?

If so, could my activities be registrable under FARA?

- Are they directed to U.S. audiences?
- Do they involve U.S. domestic or foreign policy?
- Do they involve the public or political interests of a foreign government or party?