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A Primer on Political
Activity by 501 (c) and 527
Organizations

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A Primer on Political Activity by *501(c)* *and 527 Organizations*

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Some key terms and concepts

- Lobbying – attempting to influence legislation
- Electioneering or campaign intervention – intervening or participating in individual's campaign for public office directly or indirectly.

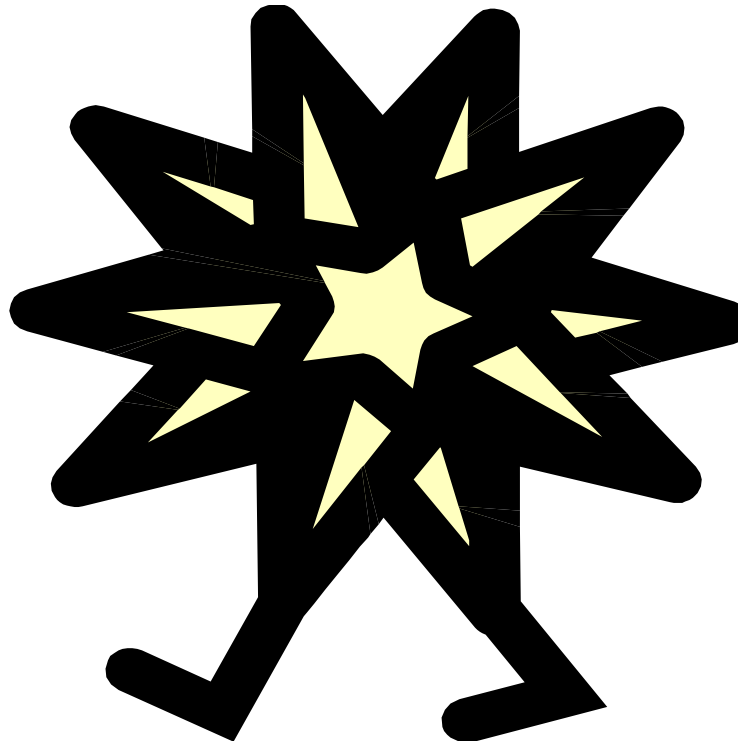


Important Categories

- 501(c)(3) charities
- (c)(4) social welfare organizations
- (c)(5) labor union
- (c)(6) business leagues
- 527 political organizations



501(c)(3) charities provide a kind of baseline or reference point, especially for definitions.



501(c)(3) public charities can engage in lobbying so long as lobbying activities are not substantial.

- What is substantial?
- Who knows?
- Early cases suggest less than 5% of organization's time and effort is okay.



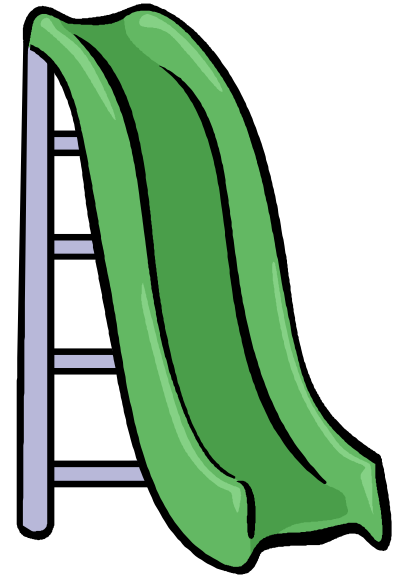
Later cases use balancing test in context of objectives and circumstances (“smell test”)

- % of budget
- % of employees’ time
- Continuous or intermittent legislative involvement
- Nature of organization and its aims
- Organization’s visibility



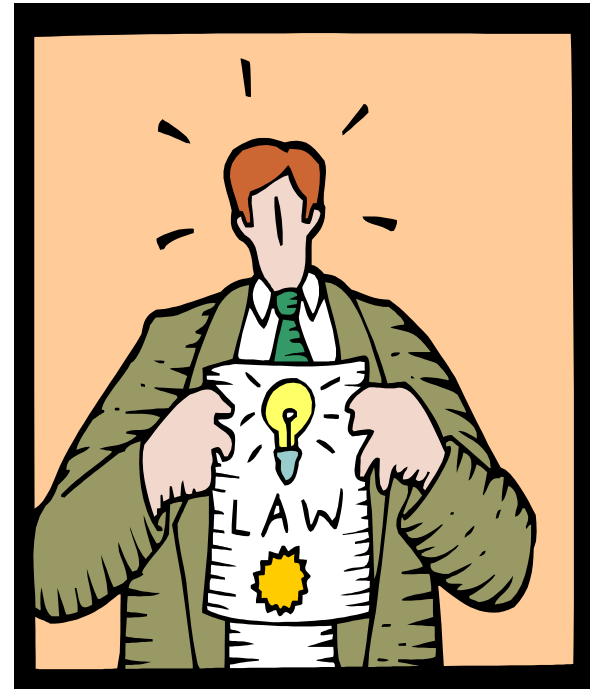
Organizations except churches can also elect a sliding scale expenditure limit.

- Amounts are:
 - 20% of first \$500K
 - 15% of next \$500K
 - 10% of next \$500K
 - 5% of amount over \$1.5 million
 - Max of \$1 million
- Few organizations (1-2%) make the election; organizations reach \$1 million limit at budget of \$17 million



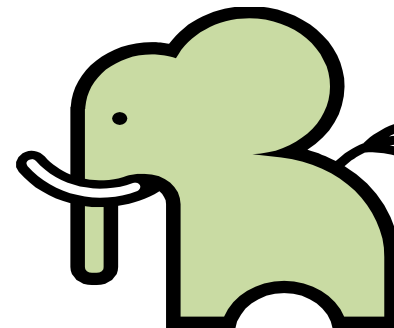
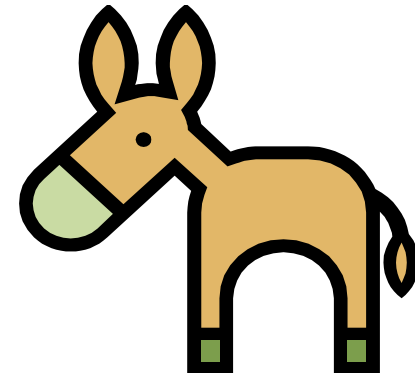
Lobbying is attempting to influence legislation, that is:

- Contacting, or urging the public to contact, members of a legislative body for the purpose of proposing, supporting, or opposing legislation; or
- Advocating the adoption or rejection of legislation



Campaign intervention prohibition for c-3's

- By its terms the statutory provision is absolute.
- It involves people running for office, not issues.
- There is no definitive definition of what campaign intervention means.
- Minor violations (candidate speaking at church) often ignored
- IRS investigated in 04, 06, 08
 - Lots of small violations
 - Orgs promised to do better



A 2007 revenue ruling gave long-sought official guidance.

- Voter Education, Voter Registration and Get Out the Vote
- Individual Activity by Organization Leaders
- Candidate Appearances
- Candidate Appearances Where Speaking or Participating as Non-Candidate
- Issue Advocacy vs. Political Campaign Intervention
- Business Activity
- Web Sites



More on official guidance in Rev. Rul. 2007-41

- All tests are facts and circumstances – not bright line.
- Such an approach is vulnerable after *Citizens United*.



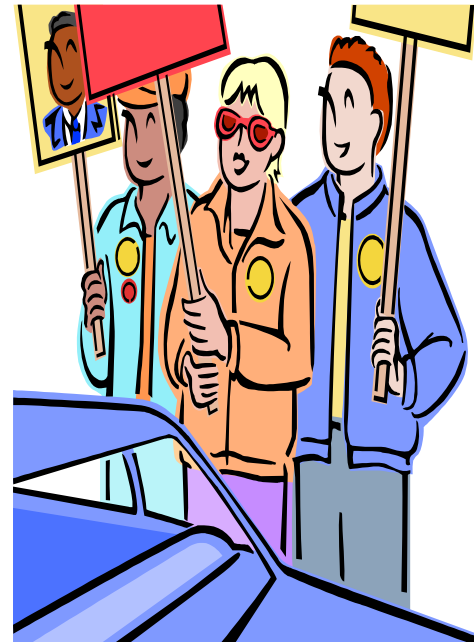
Issue Advocacy vs. Campaign Intervention: Under Rev. Rul. 2007-41, ask whether the statement:

- Identifies one or more candidates for given public office;
- Expresses approval or disapproval for one or more candidates' positions and/or actions;
- Is delivered close in time to the election
- Makes reference to voting in an election.



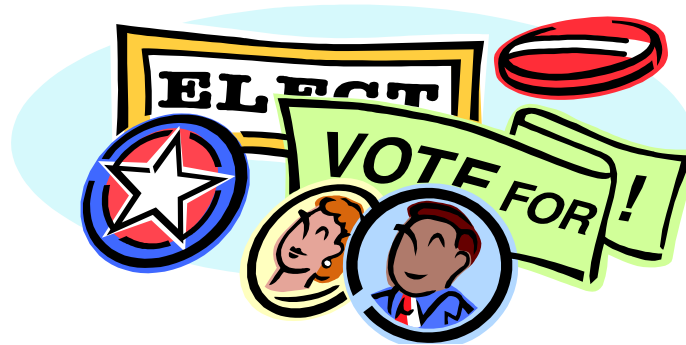
Issue Advocacy vs. Campaign Intervention con't

- Whether the issue has been raised as an issue distinguishing candidates for a given office;
- Whether the communication is part of an ongoing series by the organization independent of the timing of any election;
- Whether the timing and the identification of the candidate are related to a non-electoral event such as a scheduled vote on specific legislation by an office holder who is also a candidate for public office.



Issue Advocacy vs. Campaign Intervention con't

- A communication is particularly at risk of political campaign intervention when it makes reference to candidates or voting in a specific upcoming election.



Other 501(c)(3) facts

- Charitable deduction for income, gift, and estate tax purposes.
- Donors to private foundations, but not public charities, are public information
 - Private foundations are generally grant-making organizations supported by a family, corporation, small group or single person



501(c)(4)'s occupy a middle ground - many have connections to c-3's and engage in some charitable activities, but are treated in the same way as c-5's and c-6's re lobbying and campaign intervention.



- Defined in statute as “civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare.”
- “Under regulations, “exclusively” means “primarily.” Must be operated “primarily for the purpose of bringing about civic betterment and social improvements.” Reg. 1.501(c)(4)-2(i).
- Campaign intervention, per regulations, is not promotion of social welfare.

501(c)(4) organizations

- Examples include HMOs and some low income housing developments
- But they are often created because they can lobby without limit and engage in campaign intervention so long as it is not the organization's primary activity
- Qualification judged by activities over entire tax year.
- No charitable contribution deduction for donations.



C-4 con't

- No definition of “primary”
- IRS uses c-3 definition of campaign intervention
- Paired c-3/c-4 entities common.
 - Sierra Club and Foundation
 - NRA and Foundation



More 501(c)(4) facts

- May get contributions, may get funds that are deductible as business expenses.
- If business expense, not deductible to extent used for lobbying or campaign intervention.
- 501(c)(4)s are not required to apply to IRS for recognition of exemption. (In contrast, most (c)(3)s must apply.)
- Donors are not public under tax or election law.
- Thus, was vehicle of choice for many in last election.
 - We'll discuss Crossroads GPS as an example shortly.
- Whether gift tax applies was recently controversial; IRS has announced it won't apply gift tax in this context.



Section 501(c)(5) and (6) organizations

- Same rules as c-4's re lobbying and campaign intervention.
- Generally financed by dues, rather than contributions.
- Dues not deductible to extent used for lobbying and campaign intervention; organization can pay a proxy tax.

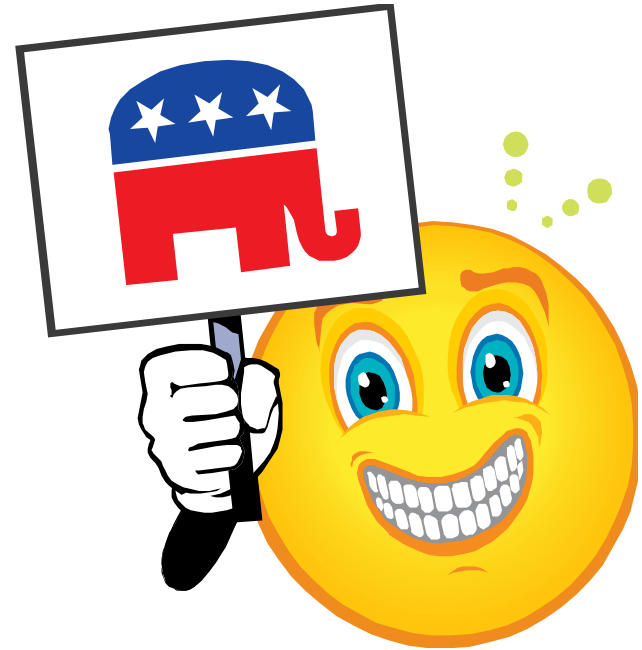


527 organizations are political organizations of all kinds.



Section 527 organizations

- Section 527 applies to political organizations – entities that have campaign intervention as primary purpose and activity.
- A Separate Segregated Fund (SSF) (bank account) can be a 527 organization.



Section 527 con't

- Provision serves two very different purposes.
 - Taxes all political organizations (including PACS) on investment income.
 - Special provision for tax if 501(c) engages in campaign intervention directly.
 - Regulates 527 organizations that do not report to the FEC or states.
 - We seem to call FEC-regulated orgs “PACS”
 - And IRS-regulated groups “527s”



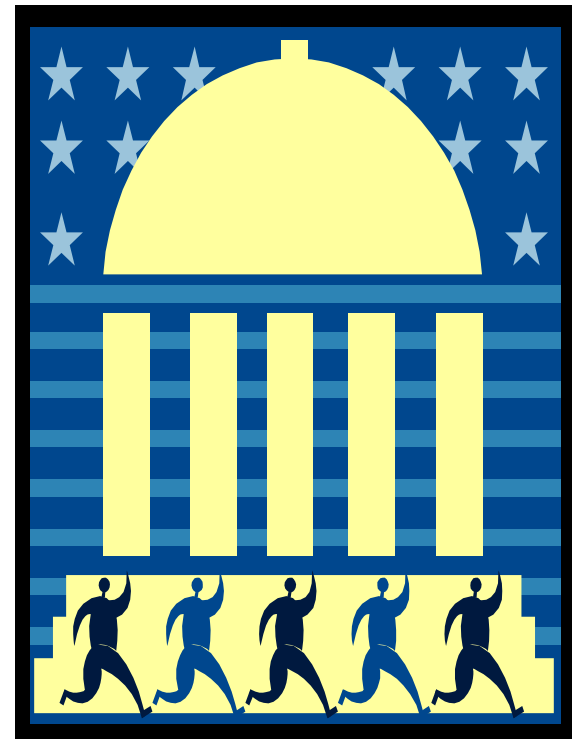
527 con't

- Congress added regulatory provisions in 2000 when organizations sought rulings as 527s because at the time there was no required donor disclosure and statutory provision exempted these entities from the gift tax.
- Now there is disclosure for what were dubbed “stealth 527’s.”



527 con't

- IRS interprets campaign intervention broadly, unlike FEC.
 - For the FEC, only express advocacy and electioneering communication (a particular kind of communication in mass media near an election regulated by FEC)
 - IRS applies same tests as for 501(c)(3) prohibition
- Again, unlike c-4s, contributions to 527s are exempt from gift tax per statutory provision but donor disclosure is required.

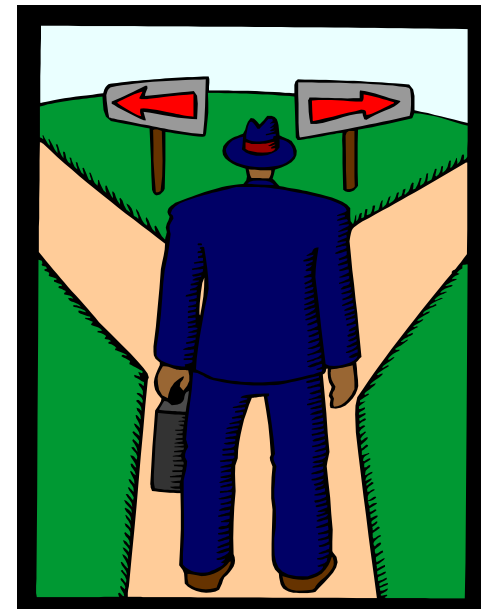


IRS Rev. Rul. 2004-6 lists factors for distinguishing lobbying from 527 activity (and note that these are not quite the same factors as those in Rev. Rul. 2007-41, discussed above)

- The communication identifies a candidate for public office;
- The timing of the communication coincides with an electoral campaign;
- The communication targets voters in a particular election;
- The communication identifies that candidate's position on the public policy issue that is the subject of the communication;
- The position of the candidate on the public policy issue has been raised as distinguishing the candidate from others in the campaign, either in the communication itself or in other public communications; and
- The communication is not part of an ongoing series of substantially similar advocacy communications by the organization on the same issue.

Example of Crossroads GPS

- Is a c-4
- Affiliated with American Crossroads, which is registered with FEC as PAC
 - Thus, disclosure of donors required for American Crossroads
- According to Center for Responsive Politics, Crossroads GPS spent more than \$70 million in independent expenditures in 2012 election cycle.
 - No donor disclosure to FEC or IRS required
 - But campaign intervention must not be its primary activity



Example of Citizens United

- Organization involved in famous case is a 501(c)(4).
- Thus campaign intervention cannot be its primary activity.
- Organization asserted that it was making a documentary movie, not doing campaign intervention
- Supreme Court rejected this argument and said movie was electioneering communication.
- Citizens United had some corporate donors
- Issue in case was legality of corporate donors to it and disclosure of funders for ads for movie under campaign finance rules - not disclosure of contributors to it under tax rules for 501(c)(4)
- Supreme Court decided it was unconstitutional to forbid corporate donors.



Other issues

- Attempts in Congress to mandate donor disclosure for 501(c)(4)s, (5)s and (6)s have failed to date
- 501(c)(4)s, (5)s, (6)s currently are not required to file an application for recognition of exemption
- Annual Report on Form 990 available at Guidestar.org (for all 501(c)s that must file) but not for some time after filing
- Ability of IRS to judge campaign intervention given ambiguous tests or to audit within election cycle is limited.

