



## **Recent Supreme Court Decision Does NOT Lift Campaign Restrictions on 501(c)(3) Charitable Nonprofits**

The U.S. Supreme Court's recent landmark decision in [\*Citizens United v. Federal Election Commission\*](#) (No. 08-205; decided January 21, 2010), concerning the application of certain election laws to corporations, does NOT change how other laws limit the election-related activities of charitable nonprofit organizations with tax-exempt status under Section 501(c)(3) of the Internal Revenue Code. The National Council of Nonprofits prepared this brief analysis to clear up any confusion surrounding the decision and to help charitable nonprofits avoid actions that could jeopardize their tax-exempt status.

### **Key Laws Still Limit Election Activities by Charitable Nonprofits**

Federal law declares that charitable nonprofits and foundations may not "participate in, or intervene in (including publishing or distributing statements), any political campaign on behalf of (or in opposition to) any candidate for political office" at the federal, state, and local levels. 26 U.S.C. § 501(c)(3). The [IRS has warned](#): "all section 501(c)(3) organizations are absolutely prohibited from directly or indirectly participating in, or intervening in, any political campaign on behalf of (or in opposition to) any candidate for elective office. Contributions to political campaign funds or public statements of position (verbal or written) made on behalf of the organization in favor or in opposition to any candidate for public office clearly violate the prohibition against political campaign activity. Violating this prohibition may result in denial or revocation of tax-exempt status and the imposition of certain excise taxes."

### **But What About the Recent Supreme Court Case?**

Readers of the Supreme Court's majority opinion must look at the entire context, the underlying facts, and the actual holding of the case rather than just this sweeping language on page 50: "Government may not suppress political speech on the basis of the speaker's corporate identity. No sufficient governmental interest justifies limits on the political speech of nonprofit or for-profit corporations." That language does *not* allow 501(c)(3) charitable nonprofits to ignore other federal laws. Here's why:

1. The issue the Court ruled on was the constitutionality of Section 441b of federal election laws as amended by Section 203 of the Bipartisan Campaign Reform Act of 2002 (the "McCain-Feingold" Act), not anything else. That provision concerned the ability of corporations and unions to use their funds to expressly advocate for the election or defeat of candidates or to broadcast "electioneering communications" within 30 or 60 days of an election.
2. On page 3 of the majority opinion, the Court essentially affirmed that federal law still prohibits corporations and unions from making direct contributions to candidates and from making independent expenditures that expressly advocate for the election or defeat of a candidate – which are similar to the prohibitions in Section 501(c)(3) that apply to charitable nonprofits.
3. But according to the Court's opinion, *Citizens United* is a nonprofit, so doesn't that open the door for all nonprofits? No, because [Citizens United is a 501\(c\)\(4\) nonprofit](#), and federal law has always given other nonprofits – (c)(4) civic groups, (c)(5) labor unions, and (c)(6) chambers of commerce and trade associations – much greater latitude in election matters than (c)(3) charities. The reason: Donations to 501(c)(3) nonprofits are tax deductible.
4. But what about the language on pages 20-21 of the majority opinion that cites the Sierra Club, the National Rifle Association, and the American Civil Liberties Union in examples to demonstrate how application of the law would censor nonprofits? First, note how the majority opinion on those pages limits its analysis strictly to the application of Section 441b. Second, the NRA is a 501(c)(4) and the ACLU and Sierra Club both have 501(c)(3) and 501(c)(4) counterparts with those names. So once again, the opinion's seemingly broad language does not change the laws that apply to 501(c)(3) charitable nonprofits.

## What *Can* 501(c)(3) Charitable Nonprofits Do in Connection with Political Campaigns?

1. *Know the law.* Federal law, as interpreted by the IRS, still *allows charitable nonprofits to engage in a lot of different activities relating to elections*, such as “certain voter education activities ... [and] other activities intended to encourage people to participate in the electoral process, such as voter registration and get-out-the-vote drives ... if conducted in a non-partisan manner.” Indeed, to fully advance their own missions, charitable nonprofits need to appreciate the many reasons *why* they should get more involved in election-related work, and how easy it is to do. The Nonprofit Voter Engagement Network’s website explains why nonprofits should engage in election work. Nonprofits can learn more about what they legally can do in connection with elections from these trusted resources:
  - Alliance for Justice: [www.afj.org](http://www.afj.org)
    - “[Electoral Activities Checklist](#)”
  - Center for Lobbying in the Public Interest: [www.clpi.org](http://www.clpi.org)
    - “[Nonprofits & Election-Related Activities](#)”
    - “[Initiatives & Referenda](#)”
  - Internal Revenue Service: [www.irs.gov](http://www.irs.gov)
    - “[Election Year Activities and the Prohibition on Political Campaign Intervention for Section 501\(c\)\(3\) Organizations](#)”
    - “[Charities, Churches, and Educational Organizations – Political Campaign Intervention](#)”
  - Nonprofit Voter Engagement Network: [www.nonprofitvote.org](http://www.nonprofitvote.org)
    - [How can nonprofits legally engage in election work?](#)
2. *Participate on a nonpartisan basis in elections involving candidates.* Although charitable nonprofits may not endorse or work for or against individual candidates, the IRS recognizes that charitable nonprofits may engage in voter registration, education, and participation efforts if done neutrally on a nonpartisan basis. Revenue Ruling 2007-41 I.R.B. (June 18, 2007) at 3. For example, charitable nonprofits “may encourage people to participate in the electoral process through voter registration and get-out-the-vote drives, conducted in a non-partisan manner. On the other hand, voter education or registration activities conducted in a biased manner that favors (or opposes) one or more candidates is prohibited.” *Id.*
3. *Campaigns for/against specific issues (e.g., legislation, initiatives and ballot measures).* Charitable nonprofits are free to engage in campaigns regarding issues. Any expenditures of money (including for staff time) will be reported on your 990 as a lobbying expenditure.

## What Else Can Charitable Nonprofits Do?

Many commentators are predicting that the Court’s decision will allow big corporations to have a far greater impact on elections and legislation across the country, so is there anything that charitable nonprofits can do? Yes. It is essential that charitable 501(c)(3) nonprofits:

1. Exercise their constitutional right to engage in lobbying and other advocacy activities to positively influence public policy. Virtually every nonprofit can advance and better protect its mission if it engages in public policy work on a regular basis.
2. Recognize that “there is safety and power in numbers” and join their state association of nonprofits. By doing so, individual nonprofits will gain access to critical information about federal and state public policy matters, among *many* other benefits. The charitable nonprofit sector enjoys great diversity, yet we also share many common interests that can be protected best by uniting together. In doing so, nonprofits can amplify our collective voices on policy matters more clearly and forcefully.
3. Stay tuned; while these are the immediate implications, it is inevitable that there will be many court challenges, FEC rulings, and legislative activities at the federal and state levels that will provide additional guidance.

This memo is intended for educational and informational purposes only. Nothing contained herein is to be considered as legal advice for specific matters; readers are responsible for obtaining such advice from their own legal counsel.