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## Charity Advocacy and Impeachment: Opportunities and Risks

The rapidly-unfolding events of this week have raised the prospect of upcoming votes in the U.S. House of Representatives and, potentially, the Senate on the question of impeachment of Donald Trump. Of course, Trump is not just the sitting President; he is also a candidate for election in 2020. Public charities (but not private foundations) can lobby within surprisingly generous limits, but they cannot take sides in candidate elections.

So, how do the rules apply when the issue is impeachment of a sitting President who is also a candidate for election?

### *Impeachment Votes are Legislation, Not Candidate Campaign Intervention*

The impeachment process involves **two main legislative steps**: a vote in the House on Articles of Impeachment, and, if a majority in the House approves the Articles, a vote in the Senate on whether to “convict” the President.

Like **votes to confirm judicial and executive nominees**, both of these votes, and any preliminary votes that may take place in committees of either body, are **legislative acts** within the meaning of the federal tax law definition of lobbying. Even though these votes concern whether the current President should remain in office, and even though the President is also currently a candidate for election (more on this below), efforts to influence how legislators vote on these questions are lobbying communications and, if properly conducted, are not intervention in a candidate campaign for election.

That means public charities can work to influence the outcome of impeachment votes, so long as they stay within their direct and grassroots lobbying limits. (If they haven’t done so already, eligible charities exploring advocacy on impeachment should consider electing to use the 501(h) expenditure test to measure their lobbying limits.) It also means that communications that fit within the **lobbying exceptions** won’t count against those limits, and can be conducted with funding that can’t be used for lobbying (as a result, for example, of a restriction in a grant agreement).

### *But . . . Be Cautious in Election Season*

Of course, the debate over impeachment is happening in the midst of a Presidential election campaign, so the lobbying question is not the only issue with which charities (including private foundations) must contend. Charities also have to avoid any activities that reflect support for or opposition to any candidate or party for election to public office.

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Because Trump is also a candidate, charities should be scrupulous about sticking to the impeachment issue in all of their communications, and avoid any statements about Trump's re-election bid, his overall fitness for office, or preference of any candidate or party. Any ambiguity about whether the communication might be an effort to influence the election will increase the charity's risk.

The IRS has provided **some useful guidance** on charity activities in an election year, making clear that it considers all of the surrounding facts and circumstances to determine whether a given communication constitutes candidate campaign intervention. The facts and circumstances surrounding the impeachment debate, at the very least, invite inquiry into whether a given communication is an effort to influence impeachment or to affect the election. To be safe, charities working on impeachment should review the IRS's guidance and design their activities to take advantage of the opportunity the tax law provides to influence the impeachment vote while avoiding candidate campaign intervention.