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The Election Is Over. Now What?

Before the election on November 8, you were well aware that your 501(c)(3) charity could not endorse candidates for public office or otherwise intervene in any election. You carefully monitored your organization's activities over the course of the campaign to comply with this requirement of your charity's tax-exempt status. The election is over, and Donald Trump is president-elect. What can you do now?

Must the charity still avoid saying anything that might appear to favor or oppose a candidate or political party, even though the 2016 election is finally over?

While the prohibition against "campaign intervention" — taking actions that may help elect or defeat a candidate — cannot be ignored after Election Day, a charity need not avoid communications that address the 2016 election or mention previous candidates.

Some safe things that a charity might do:

- › congratulate a candidate or say thanks for all of his or her hard work;
- › focus on policy issues you'd like to see a winning candidate address now that he or she has been elected to office;
- › comment on the results of the past election — what happened and why (but be careful not to comment too generally on anyone who might be a future candidate — see first bullet point under *Things a charity should still avoid*, below);
- › advocate for changes in the election process (e.g., modifying voter identification laws; modifying or abolishing the Electoral College); and
- › engage with the current presidential transition team about policy issues or nominations.

Some of these activities might involve legislation, so organizations that wish to avoid lobbying should consider this possibility in advance and if necessary consult legal counsel.

Things a charity still should avoid:

- › supporting or opposing a former candidate or a political party in a way that might carry forward to a future election (rather than, for instance, focusing on what a winning candidate should or shouldn't do while in office);
- › taking credit for an election result, which could suggest intended intervention in the

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Nonprofit Law Matters looks at legal issues in the nonprofit and tax-exempt organizations world. Written by the attorneys and paralegals of Adler & Colvin, it provides updates and analysis regarding philanthropy, charity, and other exempt organization issues.

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- past election that may undermine the organization's nonpartisan status in the future; and
- › indicating that the organization intends to hold the elected candidate accountable in a way that is susceptible to being interpreted as a reference to a future election.

The same federal tax rules apply to the charity the day after the election as the day before. It is just less likely that candidate intervention will occur. With the 2016 campaign completed so recently, we are no longer close in time to a pending election. Similarly, it is far less likely (although not impossible) that an individual has already been identified as a future candidate for public office or that the charity is going to refer to voting in a future election that is still years away.

Another key factor the IRS considers is whether the timing of the charity's communication is related to an event other than an election (e.g., a legislative vote). With new terms on the horizon for Congress and state legislatures, there are countless policy and legislative matters between now and the next election that a charity might address.

In addition, a charity can begin to create a solid record now of focusing on its important issues, independent of any pending election. Building this track record can help the organization years later when it wants to continue to highlight these issues as a future election approaches.