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The Election Is Over. Now What?

Before the recent election, you were well aware that a 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 organization's tax-exempt status. The election is over. Now what?

Many charities treat election outcomes as a call to action and return to their work with resilience and steadfast advocacy. But a question remains: must a charity still avoid saying anything that might appear to favor a candidate or political party, even though the election is 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 does not need to avoid communications that address a completed election or that mention previous candidates.

Some safe things that a charity may do:

- › congratulate a candidate or thank them for all of their hard work;
- › focus on policy issues you'd like to see a winning candidate address while in office; and
- › comment on the results of the past election—what happened and why (short of commenting too generally on the fitness of a candidate—see first bullet point below).

Things a charity should still avoid:

- › showing support or opposition to a candidate in a way that might carry forward to a future election (rather than focus on what the person might do in office);
- › taking credit for an election result, which could be evidence of intended intervention in the past election that could haunt the organization in the future;
- › discussing holding the officeholder (or officeholder-elect) accountable in a way that suggests punishing or rewarding their performance in office by voting for or against them in the next election; or
- › discussing the results of recall elections in a way that favors or opposes someone who will run in a future replacement 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 an election completed so recently, we are no longer close in time to a pending election. Similarly, it

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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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is far less likely (although not impossible) that an individual already has 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 virtually unlimited policy and legislative matters between now and the next election that a charity might safely address. (Charities must comply with the lobbying limits under federal tax law and any applicable lobbying disclosure rules.)

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, even during the period leading up to an election when concerns about possible campaign intervention are greater.

The election is over, but the work continues.