

Chapter 42 of Title 26, United States Code, is amended by adding new section 4956 as follows:

SEC. 4956. POLITICAL INTERVENTION.

DRAFT July 12, 2013

(a) In general

(1) Cross-references

(A) Activities defined as political intervention in this section shall—

(i) fully define participation or intervention in a political campaign for purposes of section 501(c)(3), section 501(c)(29)(iv), section 504(a)(2)(B), and section 170(c)(2)(D);

(ii) be excluded from the exempt purposes and functions of any organization that claims exemption from taxation under any paragraph of section 501(c) other than subsection (3); and

(iii) fully define political function for purposes of section 527(e)(2)

(B) An expenditure for activities defined as political intervention shall—

(i) fully define a “political expenditure” within the meaning of section 4955(d);

(ii) fully define a “taxable expenditure” “to influence the outcome of any specific public election” within the meaning of section 4945(d)(2) ; and

(iii) fully define an amount paid or incurred for participation in, or intervention in, a political campaign within the meaning of section 162(e)(1)(B).

(2) Scope

The activities defined as political intervention in this section shall include activities conducted by an organization in relation to federal, state, local, and foreign election campaigns of candidates for public office. For purposes of section 162(e)(1)(B), the term “organization” as used in this section shall include any taxpayer, whether conducting a trade or business as a legal entity or as an individual.

(3) “Candidate” defined

For purposes of this section, a “candidate” is a person who offers himself or herself for election to public office or whose election the person conducting the activity or making the expenditure in question expressly proposes, supports, or opposes.

(4) “Election” defined

For purposes of this section, an “election” is a process culminating in a vote by the public to determine whether a candidate will serve in a public office, including primary, general, special, and runoff elections, nominations by caucus, convention, or other means, and recall and confirmation votes.

(b) “Political intervention” defined

For purposes of this section, the following activities shall constitute political intervention:

(1) Express advocacy communication

It is political intervention to expressly advocate—

- (A) the election, defeat, nomination, or recall of a clearly-identified candidate;
- (B) the election or defeat of candidates affiliated with a specific political party;
- (C) that voters select candidates for support or opposition based on one or more criteria that clearly distinguish certain candidates from other candidates; or
- (D) the making of contributions to a candidate’s campaign, a political party, or (unless the contribution is restricted so that it must not be used to support political intervention) any other political organization within the meaning of section 527(e)(1).

Express advocacy includes its functional equivalent: communications that are susceptible of no reasonable interpretation other than a call to take one or more of the actions specified in subparagraphs (A) through (D) above, even if some other kind of action is also encouraged.

(2) Political communication

(A) As a threshold definition, it is political intervention to make a communication to any part of the electorate, other than an express advocacy communication within the meaning of paragraph (1) above, if and only if, the communication—

- (i) refers to a clearly-identified candidate; and
- (ii) reflects a view on that candidate.

(B) A communication described in the threshold definition is political intervention, unless:

- (i) it is within a safe harbor exception described in paragraph (3) below;
- (ii) it is specifically allowed under a Revenue Ruling or other federal tax authority; or
- (iii) the organization demonstrates that the communication is not political intervention under subsection (b)(6)(B)(i) below.

(C) Clause (iii) above shall not apply to a communication that is selectively targeted to voters in a state, district, county, city, or other electoral jurisdiction where a contested vote is expected to occur. Such a communication is conclusively political intervention. A contested vote is expected to occur unless the organization meets the burden of proof to show that the election is not competitively contested in that jurisdiction. The relevant jurisdiction for Presidential and Vice-Presidential elections shall be the state.

(3) Safe harbor for certain communications

A communication described in the threshold definition under subsection (b)(2) above shall not constitute political intervention if it does not consist of paid mass media advertising and it meets all of the criteria for inclusion under one or more of the following exceptions:

(A) Communications to influence official action

Commentary upon a public official that has a direct, limited, and reasonable relationship to specific actions the official may yet perform within his or her current term of office without mention of any election or voting in an election, or of the official's candidacy or opponent.

(B) Voter education

Voter education activities or materials that compare two or more candidates for an office, and may include the organizations' views on issues, if the communication consists solely of content in which the time, text, and/or space is offered in equal shares to each of the participating candidates, and the organization's share of content is no greater than the share available to any of the participating candidates. The opportunity to participate, including a full description of the opportunity and of the organization's share of the content (if any), must be given to all current candidates meeting an objective threshold of viability for nomination or election to the office a reasonable time in advance of the final preparation of the communication, which in no case may be less than 72 hours.

(C) Self-defense communications

A response by an organization to a public or publicly-reported statement by a candidate or candidates that either (i) attacks the organization itself, or (ii) comments upon a specific public policy position that the organization has taken publicly in furtherance of its exempt purpose within the prior year, or (iii) results in press inquiries to the organization that were not solicited subsequent to the candidate's statement by the organization. The response by the organization must be educational, limited topically to addressing the candidate's statement, and as to (i) or (ii), disseminated in a manner commensurate in medium and scale, and proximate in time, to the publicity of the candidate's statement, and as to (iii), limited to dissemination to the requesting press organization.

(D) Personal, oral remarks at official meetings

Oral remarks made by anyone other than a candidate who is present in person at an official meeting of an organization held in a single room or location, so long as no announcement of the meeting refers to any candidate, party, election, or voting. This exception covers only oral remarks made by and to persons in attendance, and not any other form of communication or redistribution of those remarks, whether written, electronic, recorded, broadcast, or otherwise transmitted. A prominent disclaimer must be made to those attending, stating that such remarks are the speaker's personal opinion and are not made on behalf of the organization, and that the speaker is not advocating any of the actions set forth in subsection (b)(1) above.

(4) “Paid mass media advertising” defined

For purposes of subsection (b)(3) above, as of the effective date of this statute, “paid mass media advertising” means a communication to the general public placed for a fee on one of the following media operated by another person: a broadcast, cable, or satellite facility, newspaper, magazine, outdoor advertising facility, mass mailing service, telephone bank, or another person’s web site or internet communications service. “Mass mailing” means a mailing by United States mail or facsimile of more than 500 pieces of mail matter of an identical or substantially similar nature within any 30-day period; provided, however, that in the case of voter education materials within the meaning of paragraph (3)(B) above, such a mass mailing shall not be deemed to be paid mass media advertising. As of January 1 of even-numbered years, the Commissioner shall issue a public notice modifying the list of media as needed to reflect substantially similar mass media, which may include media of similar impact operated by the organization itself, as changes in communications technology and utilization occur.

(5) Political use of resources

(A) It is political intervention to provide any of an organization’s resources, whether monetary or in-kind, goods, services, or facilities, tangible or intangible, by gift, loan, sale, rental, or any other method of transfer to another person or entity, if the transferee uses such resources to support or oppose any candidate’s election to public office, if

(i) such use is reasonably foreseeable, and

(ii) if the transferor has not taken reasonable steps to prevent such use.

(B) A transfer of resources described in subparagraph (A) above is not political intervention if the transfer is

(i) made in a transaction in which the fair market value of goods or services provided by the organization does not exceed the value of the consideration received in exchange,

(ii) similar to other transactions conducted by the organization, and

(iii) without preference for or against any candidate.

Any other transfer recognized under applicable campaign finance law as a reportable contribution related to one or more candidates for elective public office, to a political party, or (unless the transfer is restricted so that it must not be used to support political intervention) to any other political organization within the meaning of section 527(e)(1), is political intervention.

(C) Other uses, not specified above, of an organization’s resources (transferred or not) in support of or opposition to a candidate, if not specifically allowed under a Revenue Ruling or other federal tax authority, are political intervention unless the organization demonstrates that the use is not political intervention under subsection (b)(6)(B)(i) below.

(6) Proof of political intervention

(A) This section provides objective, viewpoint-neutral standards to determine whether an organization is engaged in political intervention. Evidence of the organization's intent with regard to the communication or to the use of resources is not relevant to a determination as to whether the activity is political intervention.

(B) In cases where the application of the standards set forth in this section does not conclusively determine that the conduct is or is not political intervention, evidence of other facts or circumstances, such as timing, the range of issues discussed, disclaimers and disclosures, an organization's history, the impartiality of its methods, or corrective steps taken, may be considered but only in the organization's defense—

(i) to demonstrate that its communication or use of resources was not political intervention, in which demonstration the organization shall bear the burden of proof to show that the conduct furthered a proper exempt or business purpose and was unrelated to intervening in the campaign of any candidate for public office; or

(ii) as mitigating factors affecting the penalty or remedy to be imposed for violations.

(c) Regulations

The Secretary of the Treasury shall prescribe, update, and modify such regulations as may be necessary or appropriate to clarify further the standards set forth in this section in light of current and future changes in campaign practices, to meet the objectives of this section to promote civic participation in democracy, curb abuses, and allow organizations to reasonably anticipate the tax consequences of their activities in advance.

(d) Effective date

This section shall apply to all taxable years of an organization that begin after the date this section is enacted.