CAIR NEW JERSEY

AMERICA'S LARGEST ISLAMIC CIVIL LIBERTIES AND ADVOCACY GROUP

MOSQUES AND THE GENERAL ELECTION: RULES, REGULATIONS AND PARTICIPATION LIMITS

Headlines are focusing on the upcoming general election. Muslim Americans, like any other community, are very much interested in voting for their preferred candidates. Mosques are the center of civic life for many Muslims. As the size of our community and our level of civic participation grows, mosques will be faced with scenarios in which they must act intelligently to avoid violating restrictions placed on non-profit organizations. As tax-exempt organizations, there are certain limits on political activities that can be carried out by non-profits.

Noncompliance with federal and state regulations governing lobbying and campaign-related activities risks the loss of an organization's non-profit status and possibly entails associated fines and back taxes.

LIMITS ON POLITICAL ACTIVITIES

All 501(c)(3) non-profit organizations are forbidden from engaging in what the IRS defines as "political activities." This includes any endorsement of a candidate for office or a political party. A mosque employee or board member, acting in their official capacity, may never endorse a candidate for office or a political candidate. Mosque resources, including email accounts, corporate cellular phones, and computers, may not be used in any political campaign. Mosque offices or personnel may not contribute or solicit funds for any candidate, political party, or political action committee.

Non-profit personnel acting in their personal capacity and outside of work hours may exercise their First Amendment rights to be engaged in political campaigns; however, they must make it clear to the public that the mosque or non-profit does not endorse any candidate or political party.

For more information, please visit: https://www.irs.gov/charities-non-profits/lobbying

NON-PARTISAN ELECTION ACTIVITIES

CAIR encourages mosques to conduct non-partisan election activities, including but not limited to voter registration drives, get-out-the-vote campaigns, publication of voter education guides, and voting records. More information about allowed election activities of non-profits can be found at: http://www.nonprofitvote.org

RECOMMENDATIONS ON BALLOT ISSUES OR LEGISLATION

Non-profits may make public recommendations on local or state ballot initiatives and on pending legislation, regulations, and agency policies. These are considered "advocacy" by the IRS, not political activities. Both are subject to the advocacy limits detailed further below.

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COMPLIANCE WITH NONPROFIT ADVOCACY LIMITS

All non-profits must comply with the advocacy and lobbying limits set by the IRS. Lobbying or advocacy is attempting to influence any actions of "Congress, any state legislature, any local council, or similar governing body, with respect to acts, bills, resolutions, or similar items (such as legislative confirmation of appointive office), or by the public in referendum, ballot initiative, constitutional amendment, or similar procedure." It does not include actions by executive, judicial, or administrative bodies. The IRS does not permit non-profits to engage in "substantial activities" supporting their advocacy work. The legal definition of "substantial activities" is unclear and case-specific, unless a nonprofit elects to file for the 501(h) election detailed below.

RECOMMENDATIONS FOR 501(H) ELECTION

Because of the lack of clarity for advocacy limits under IRS regulations generally, some non-profits choose to file a "501(h)" election with the IRS using Form 5768. If a 501(h) election is filed, then organizations are limited to spending 20% of the first $500,000 of their budget on lobbying and advocacy.

For more information, please visit: https://www.irs.gov/charities-and-nonprofits

Non-profit personnel acting in their personal capacity and outside of work hours may exercise their First Amendment rights to be engaged in political campaigns; however, they must make it clear to the public that the mosque or non-profit does not endorse any candidate or political party.
For more information, please visit: http://www.irs.gov/Charities-&-Non-Profits/Lobbying.

COMPLIANCE WITH FEDERAL LOBBYING DISCLOSURE ACT

Non-profits that employ an individual who spends over 20% on lobbying federal officials may be required by the Federal Lobbying Disclosure Act (LDA) to register with Congress. If a CAIR-NJ employee spends more than 20% of their time on federal lobbying, they must research and comply with the LDA.

COMPLIANCE WITH STATE AND LOCAL LOBBYING DISCLOSURE ACTS

Many states and localities have their own lobbying disclosure acts, which provide that organizations or individuals who exceed a certain threshold in time or budget spent on advocacy or lobbying work need to register with a local authority. It is encouraged to research and familiarize yourself with all applicable state or local lobbying disclosure acts so they can ensure compliance therewith.

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GIFT GIVING

Giving a Quran or other gifts is never unwelcome; however, all non-profits offices must comply with federal and state guidelines that severely limit providing gifts or entertainment to elected officials, their staff, agency employees, or contractors.
In general, such gifts are prohibited unless falling into one of three categories:

- The gift is valued at less than $250 and given because of a longstanding personal friendship with a history of such reciprocal gift giving.
- Is given by the sponsor of an event covering the fee of joining a widely attended event of 25 persons or more.
- Is given by the sponsor of an educational event and covers seminar fees, lectures, and/or presentations (excluding any presentation made by lobbyists).

Exceptions to gift-giving include food and refreshments of little value offered other than as part of a meal, educational materials or books such as the Quran, or plaques or awards.

POLITICAL ACTIVITY GUIDELINES FOR MOSQUES

501(c)(3) organizations are, by definition, not allowed to "participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office." The following guidelines apply to all mosque leaders, including board members, employees, and imams. Leaders can support candidates in their individual capacity, but their statements MUST:

1. Not be connected to their affiliated 501(c)(3) AND
2. Convey that this is solely a personal view

ORGANIZATIONS MAY DO THE FOLLOWING:

- Raise awareness for ISSUES of concern, including:
  - Educating members on candidates' views on issues in a neutral manner without commentary
  - Educating all candidates about issues important to their members
- Publish information about legislators' previous votes; MUST refer to a variety of major issues and be without comments or approval/disapproval
- Organize impartial candidate appearances or debates, where all candidates have an equal opportunity to address members
- Encourage individuals to vote, including through non-partisan registration drives or get-out-the-vote efforts
- Rent facilities or mailing lists to organizations or candidates as part of regular business; must allow any candidate to rent

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ORGANIZATIONS MAY NOT DO THE FOLLOWING:

- Support or oppose a CANDIDATE for public office, including:
  - Publishing or communicating materials that favor or oppose a candidate
  - Inviting or allowing a political candidate to make a campaign speech
  - Offering or restricting the use of premises or resources to certain candidates

- Vocally criticizing or supporting a candidate or incumbent
- Ask candidates to sign a pledge in support of an issue
- Make campaign contributions, fund expenditures, or sponsor fundraising events for candidates or connected political organizations
- Post partisan political messages on Facebook, Twitter, or any other social media site

Conduct must pass a "facts and circumstances" test that considers the organization's other activities and the current political climate. In terms of inviting/allowing a politician to speak at an event, important factors include: length of time until the individual's next election, whether the individual will reference either the election or campaign issues, and how closely the mosque is associated with the politician in the eyes of the public, including the frequency and manner in which the individual/others are given a platform.

- Rule of thumb: If no connection to candidate(s) is made, some commentary on issues is okay; DO NOT make statements about candidates.
- Best practice: In any statement that may be construed as aimed at a candidate, be sure to include: "As a 501(c)(3), we cannot endorse candidates."
- Bottom line: DO encourage members to be informed on issues and exercise their right to vote, DO NOT suggest or attempt to influence how they should vote on individuals or parties.

QUESTIONS?

If you have any questions, please feel free to contact CAIR-NJ at 908-668-5900, or e-mail us at info@nj.cair.com