

**Playing by the Rules: Political Activity**

Part Two of the CAPLAW webinar series:  
*Changing the Game: How CAAs can engage in politics, advocacy, and lobbying*

April 11, 2017

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**CAPLAW**  
CONSUMER ACTION POLITICAL LAW

Link to presentation:  
<http://bit.ly/caplawpoliticalactivitywebinar>

# Lobbying and Political Activity

## Agents

- Rules governing CAA and political campaign activity
- What types of political activity are CAA and how employees engage in it

## Lobbying vs. Political Campaign Activity

## Political Staff Law

- House members
- Senate members
- Staff members
- Political staff

## State and Local

- State and local laws
- State and local rules

State Law Restrictions

## Agenda

- **Rules** governing CAA political campaign activity
- What types of **political activity** can CAAs and their employees engage in?

## Lobbying vs. Political (Campaign) Activity



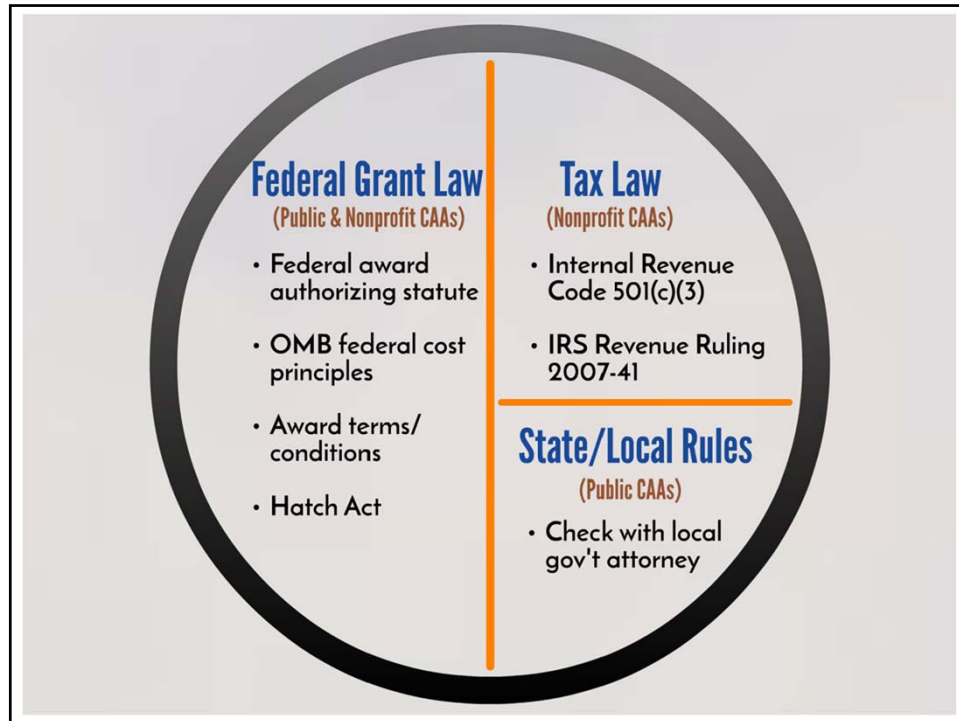
# Political (Campaign) Activity

## Candidates



Image by DonkeyHoley via Flickr, Creative Commons License

Image by DonkeyHoley via Flickr, Creative Commons License



## Organization vs. Individual Employee



**Organizations** face strict limitations in their ability to engage in political campaign activities

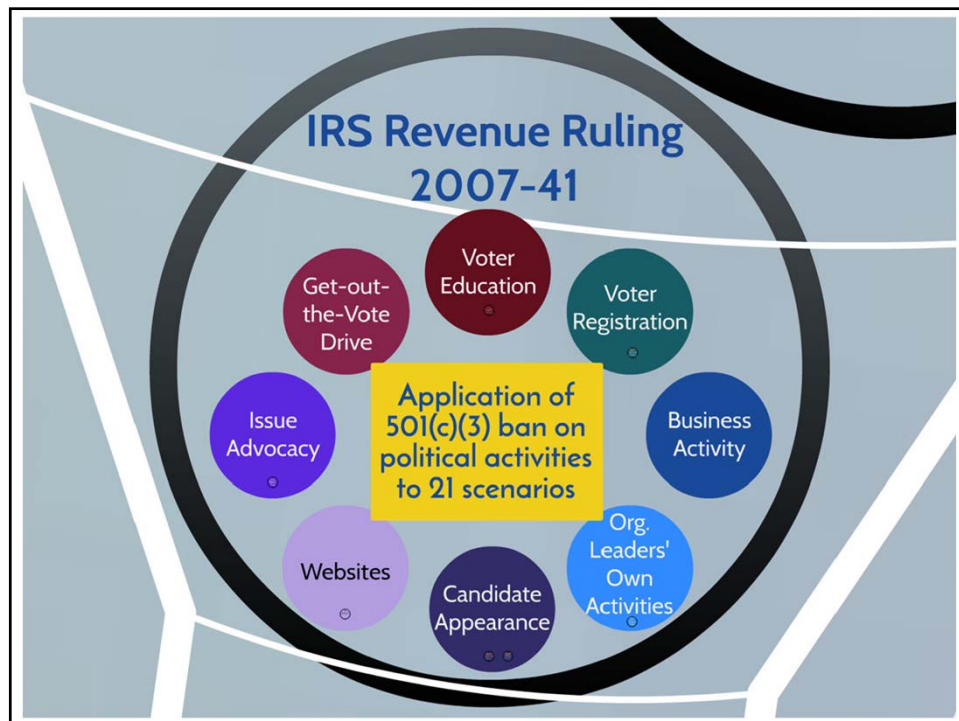
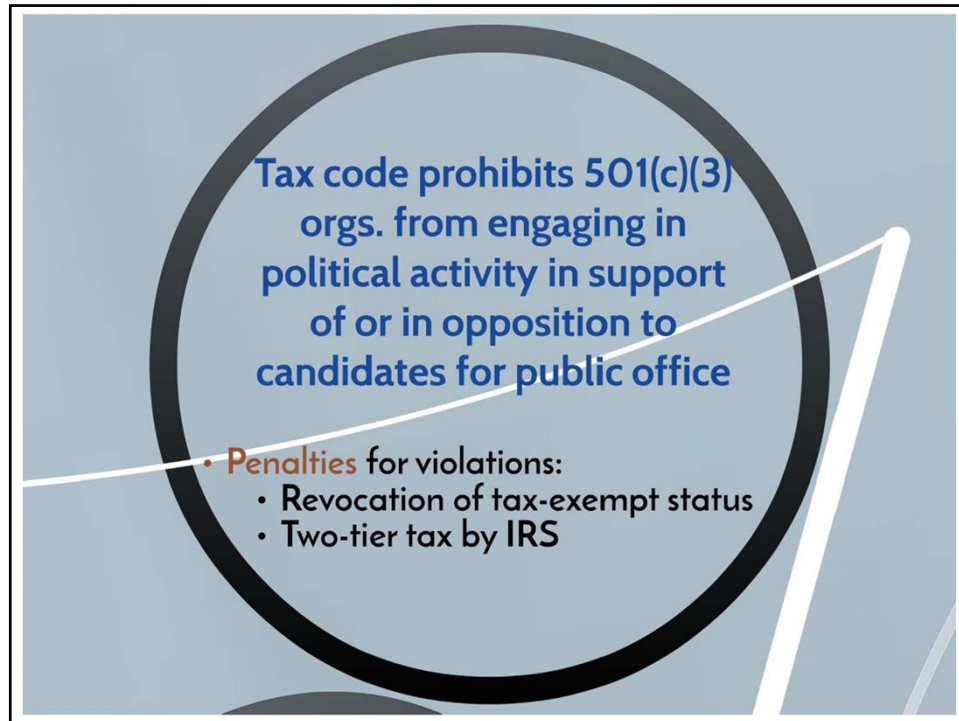
**Employees**, on their own time and outside of work, may participate freely (mostly) in political campaign activities



## Tax Law Restrictions







## Voter Education

Ok, so long as conducted  
in a nonpartisan and  
unbiased manner

- Must **NOT** reference any candidate or political party

## Voter Registration

Ok, however:

- Must be nonpartisan
- Cannot use Head Start or CSBG funds to pay for any resources or staff used in voter registration
- Cannot be conducted in a way that identifies CSBG funds with the voter registration activities

## Activity by Org.'s Leaders

Ok\* if speaking for  
themselves as  
*individuals*, rather than  
on behalf of the  
organization

\*But note additional Hatch Act  
restrictions

## Candidate Appearances

Ok, however:

- Must invite **all candidates** and  
give **equal opportunity** to speak
- Must be **neutral, nonpartisan**
- No **political fundraising**



## Candidate Appearances: Non-Candidate Capacity

- Ok if legitimate reason to speak at the organization
- Don't mention campaign
- No political fundraising
- Don't invite close to election time

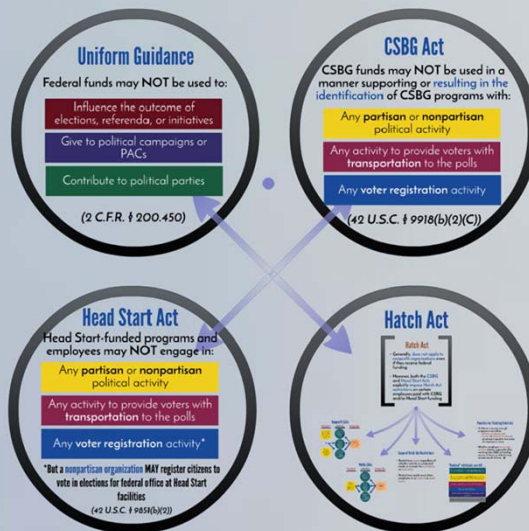
## Websites

- CAA is responsible for **content** of its website and the **links** to other sites - **check them!**

## Issue Advocacy

May take positions on public policy issues, but **CANNOT** explicitly or implicitly favor or oppose a candidate when doing so

## Federal Grant Law Restrictions



**Uniform Guidance**

Federal funds may NOT be used to:

- Influence the outcome of elections, referenda, or initiatives
- Give to political campaigns or PACs
- Contribute to political parties

(2 C.F.R. § 200.450)

This infographic features a large black circle on a light blue background. Inside the circle, the title 'Uniform Guidance' is in bold blue text. Below it, the text 'Federal funds may NOT be used to:' is in black. Three colored rectangular boxes (maroon, dark blue, and green) list the prohibited activities. A purple arrow points from the bottom right towards the green box.

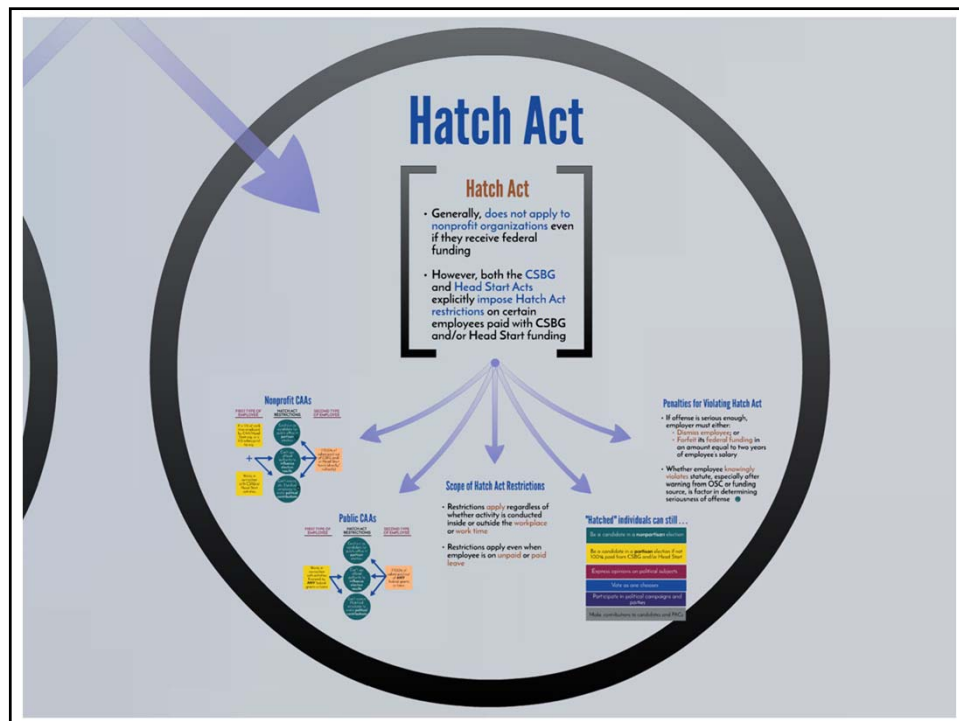
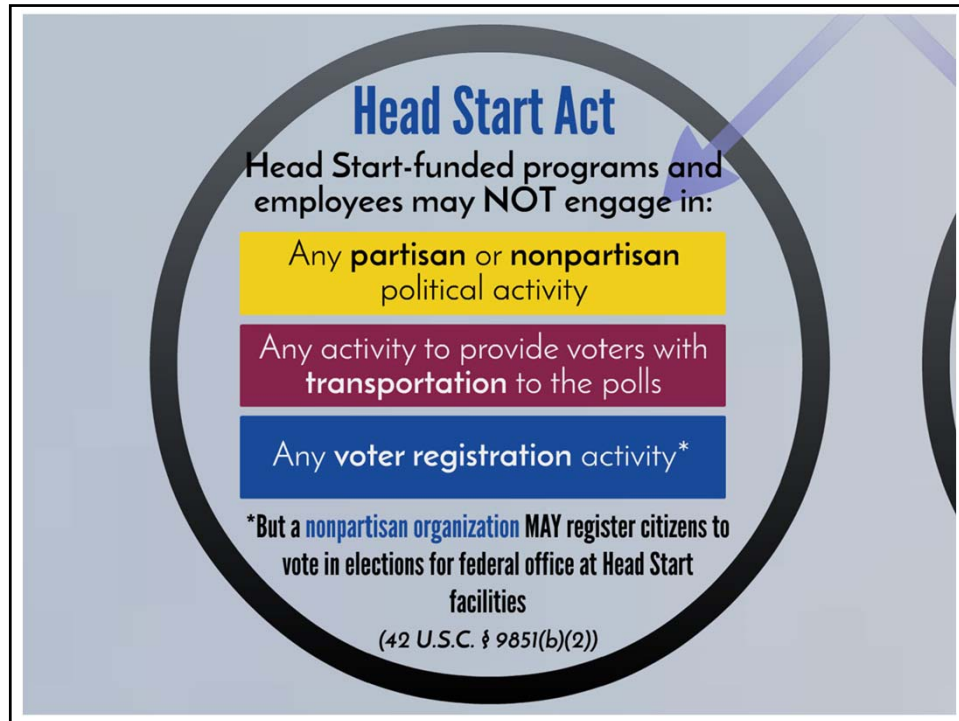
**CSBG Act**

CSBG funds may NOT be used in a manner supporting or **resulting in the identification** of CSBG programs with:

- Any **partisan** or **nonpartisan** political activity
- Any activity to provide voters with **transportation** to the polls
- Any **voter registration** activity

(42 U.S.C. § 9918(b)(2)(C))

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## Hatch Act

- Generally, does not apply to nonprofit organizations even if they receive federal funding
- However, both the CSBG and Head Start Acts explicitly impose Hatch Act restrictions on certain employees paid with CSBG and/or Head Start funding

## Nonprofit CAAs

### FIRST TYPE OF EMPLOYEE

If > 1/2 of work time employed by CAA/Head Start org. or > 1/2 salary paid by org.

+

Works in connection with CSBG or Head Start activities

### HATCH ACT RESTRICTIONS

Can't run as candidate for public office in partisan election

Can't use official authority to influence election results

Can't coerce, etc. Hatched employee to make political contributions

### SECOND TYPE OF EMPLOYEE

If 100% of salary paid out of CSBG and/or Head Start funds (directly/indirectly)



## Soliciting Contributions

- Merely **asking** for contribution is considered an **indirect form of coercion** if supervisor-subordinate relationship
- Includes **contributions** for candidates, PACs and political parties
- Includes **commanding** or **advising** another covered employee to make political contributions

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If 100% of salary paid out of CSBG and/or Head Start funds (directly/indirectly)

## Partisan Election

- At least one candidate is associated with a **party whose presidential candidate** received votes in last election
- Candidate is **identified on ballot** with party
- Designated by **state** or **local law**

## Public CAAs

### FIRST TYPE OF EMPLOYEE

### HATCH ACT RESTRICTIONS

### SECOND TYPE OF EMPLOYEE

Works in connection with activities financed by **ANY** federal grants or loans

Can't run as candidate for public office in **partisan** election

Can't use official authority to **influence** election results

Can't coerce Hatched employee to make **political** contributions

If 100% of salary paid out of **ANY** federal grants or loans

## Scope of Hatch Act Restrictions

- Restrictions **apply** regardless of whether activity is conducted inside or outside the **workplace** or **work time**
- Restrictions apply even when employee is on **unpaid** or **paid leave**

## "Hatched" individuals can still . . .

Be a candidate in a **nonpartisan** election

Be a candidate in a **partisan** election if not 100% paid from CSBG and/or Head Start


Express opinions on political subjects

Vote as one chooses

Participate in political campaigns and parties

Make contributions to candidates and PACs

## Penalties for Violating Hatch Act

- If offense is serious enough, employer must either:
  - **Dismiss employee**; or
  - **Forfeit its federal funding** in an amount equal to two years of employee's salary
- Whether employee **knowingly violates** statute, especially after warning from OSC or funding source, is factor in determining seriousness of offense 

## Hatch Act: Office of Special Counsel

- Responsible for enforcement of Hatch Act
- Will issue **advisory opinions on individual questions** (upon request) by e-mail, phone, or fax:
  - [hatchact@osc.gov](mailto:hatchact@osc.gov)
  - 800-854-2824 (phone)
  - 202-254-3700 (fax)

ation  
Scholarship/Charitable  
not Political Campaign  
(5) Tax-Exempt

in Block Grant (CSBG) Legal Training  
was created by Community Action  
in the performance of the U.S.  
Administration for Children and  
Executive Agreement - Grant Award  
Findings and conclusions, or  
any those of the author(s) and do not  
Department of Health and Human  
Services


## Hypothetical

**CAP**  
Community Action Agency, Inc. ("CAP") is a  
nonprofit community action agency that runs a  
number of anti-poverty programs, including  
Head Start, WIC, Foster Grandparents, state-  
funded child care, housing assistance, and a job  
training center. CAP uses its CSBG funds for case  
management services, community needs  
assessment and planning, enhancement of  
linkages with other community anti-poverty  
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programs in CAP satellite offices, and a portion of  
indirect costs for central management.

**Polly Politics**  
Polly Politics, longtime Chairperson of the CAP  
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1. As a small token of its support, would CAP  
buy a \$100 ticket for a campaign fundraiser?
2. Perhaps Davis could also buy a ticket  
for herself and ask the CAP development funds at  
the next staff meeting to do the same?
3. Would Davis be willing to write a letter to the  
editor about her support for the board and  
express its support of her candidacy?
4. Would CAP sign on to an ad supporting her?
5. Would CAP could if she addressed the crowd  
at the annual CAP fundraising dinner?



Activity

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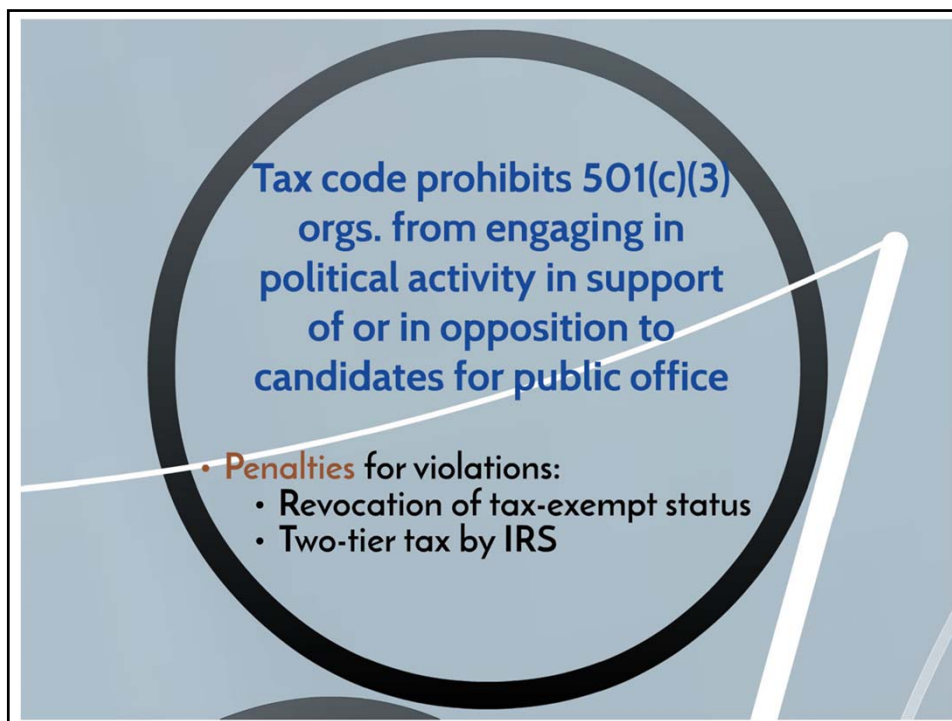
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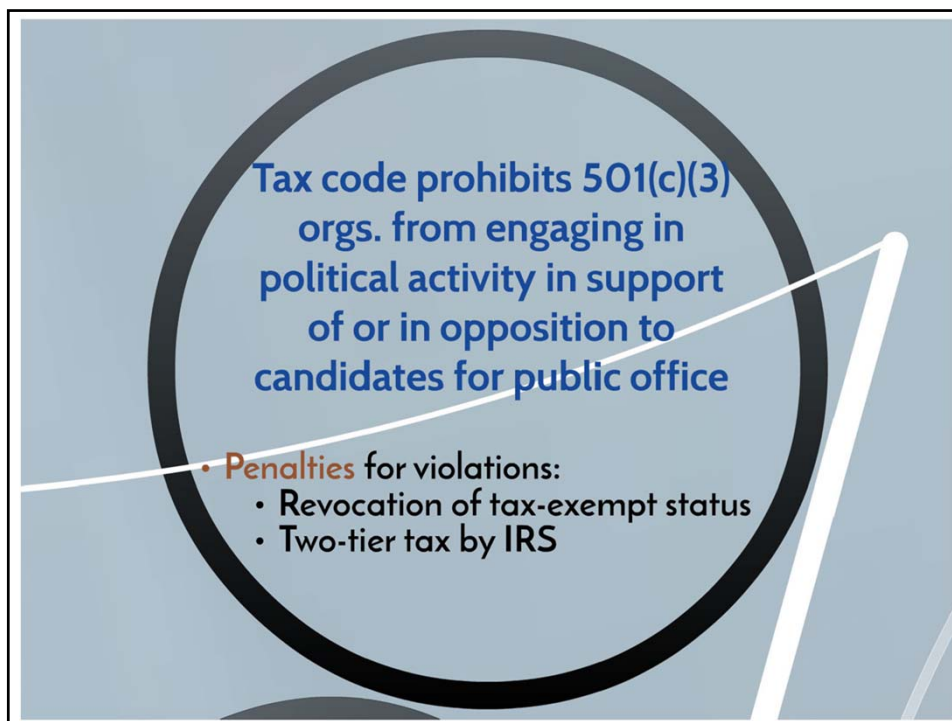


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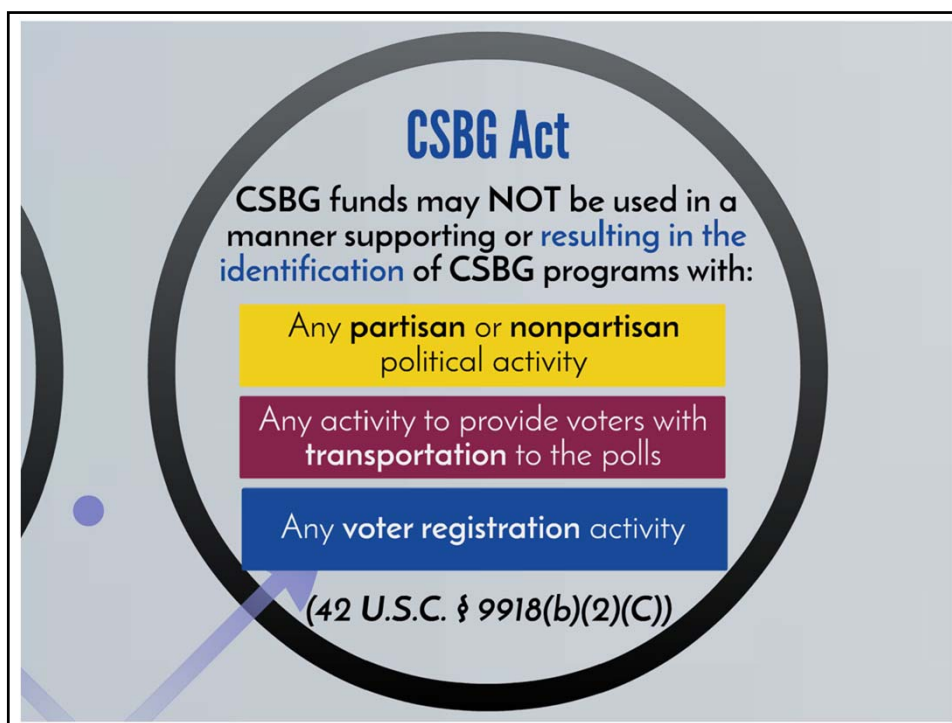


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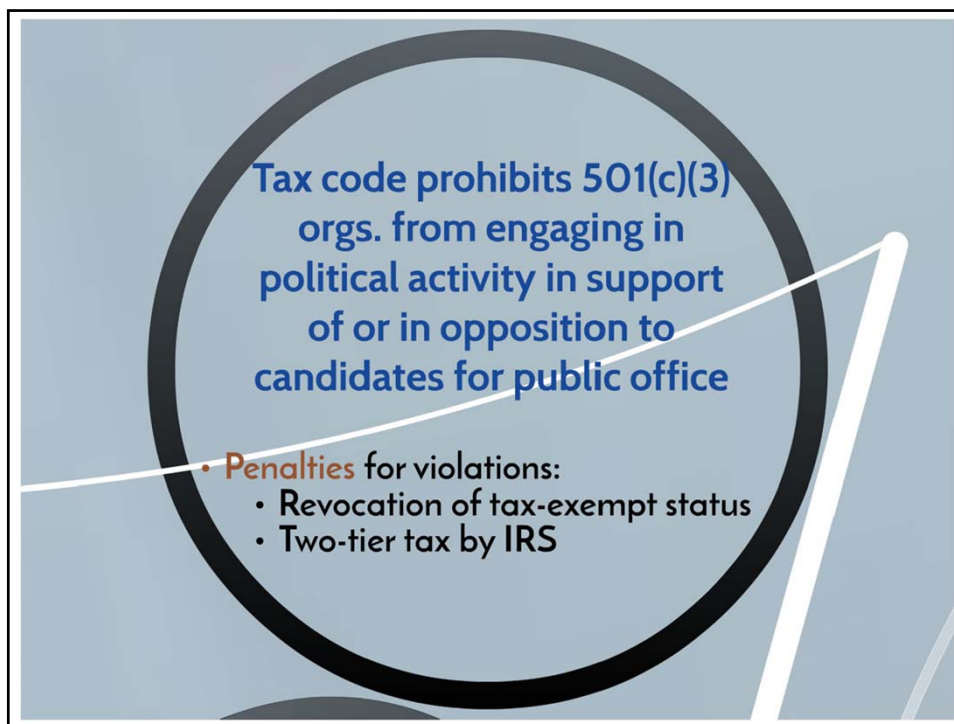
**Head Start Act**

Head Start-funded programs and employees may NOT engage in:

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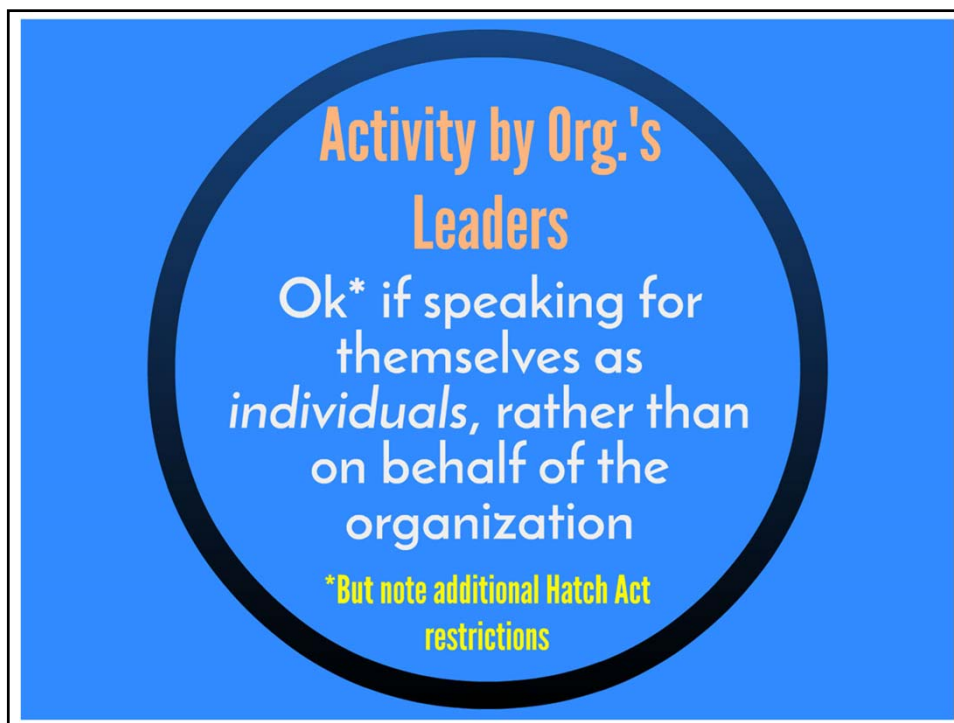
\*But a **nonpartisan organization** MAY register citizens to vote in elections for federal office at Head Start facilities

(42 U.S.C. § 9851(b)(2))



Tax code prohibits 501(c)(3) orgs. from engaging in political activity in support of or in opposition to candidates for public office

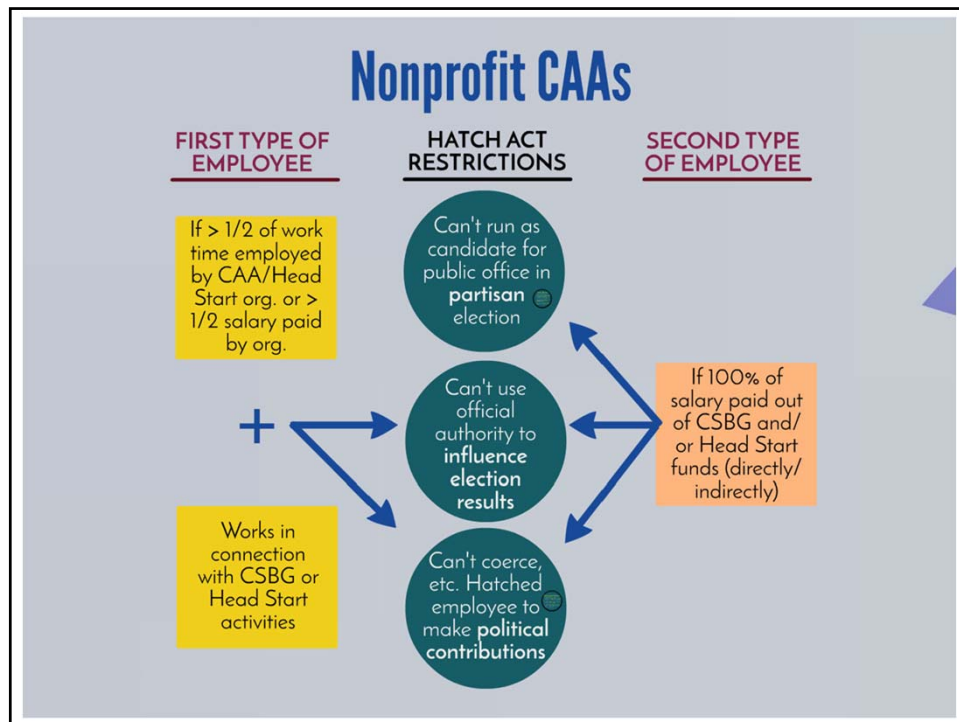
- **Penalties** for violations:
  - Revocation of tax-exempt status
  - Two-tier tax by IRS



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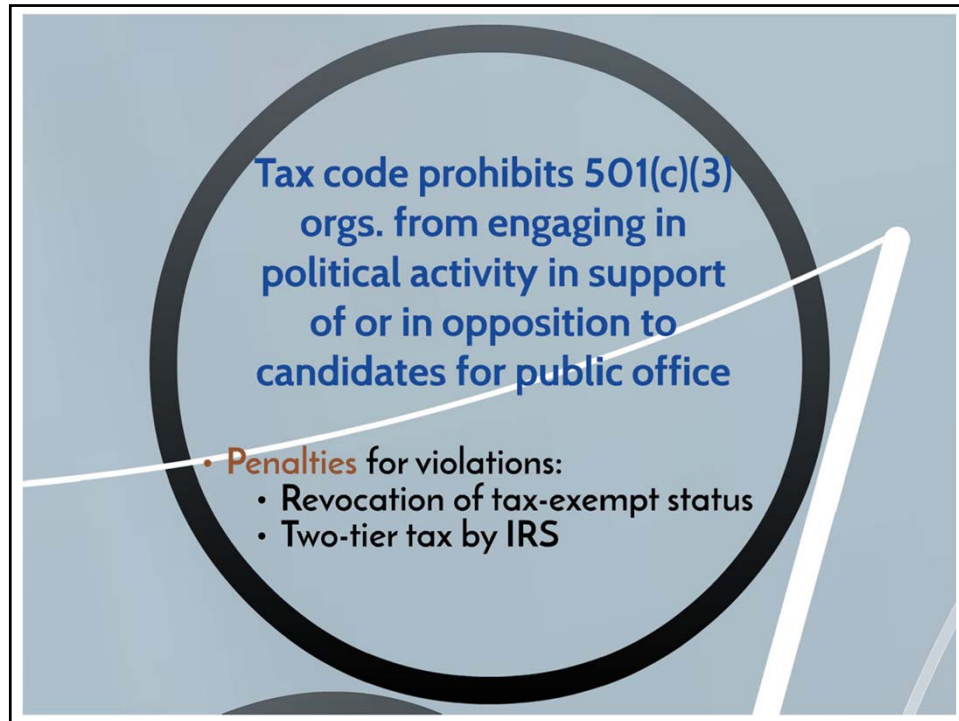
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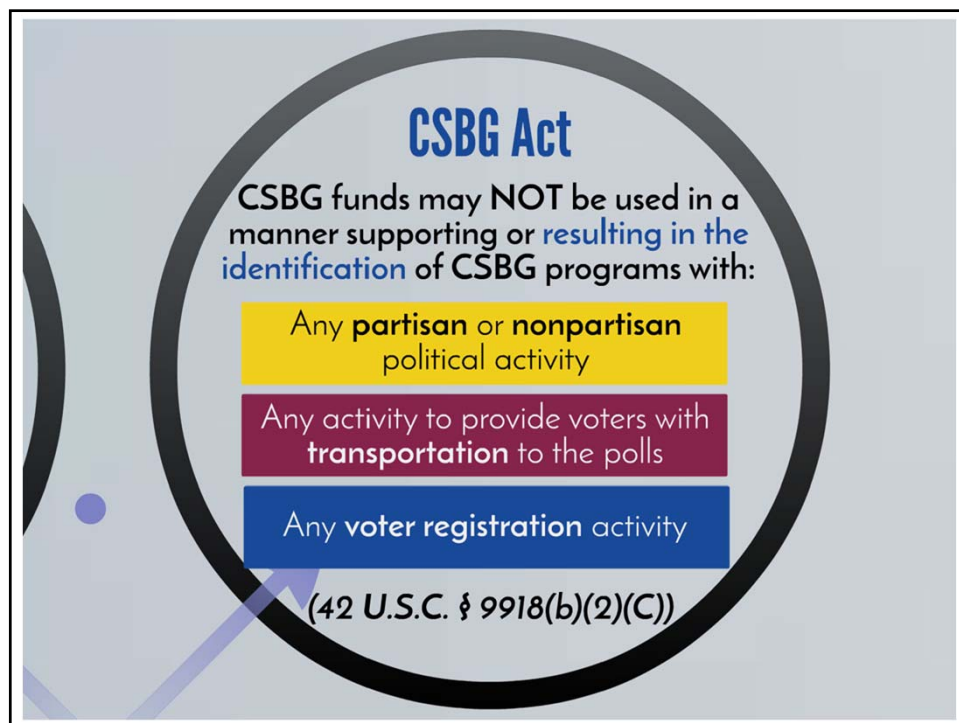




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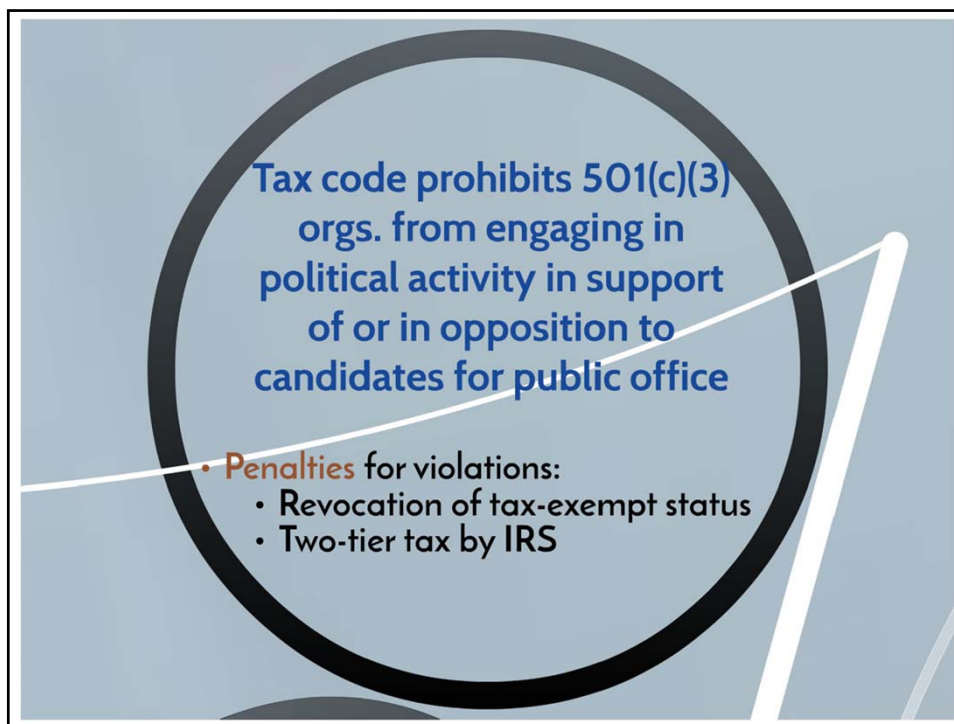
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\*But a **nonpartisan organization** MAY register citizens to vote in elections for federal office at Head Start facilities  
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- Don't invite close to election time

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Ok, however:

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- Must be **neutral, nonpartisan**
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## Additional Resources

- CAPLAW Articles, Model Policies on Political Activity  
<http://caplaw.org>
- IRS Political Activity Information  
[http://www.irs.gov/Charities-&-Non-Profits/Charitable-Organizations/The-Restriction-of-Political-Campaign-Intervention-by-Section-501\(c\)\(3\)-Tax-Exempt-Organizations](http://www.irs.gov/Charities-&-Non-Profits/Charitable-Organizations/The-Restriction-of-Political-Campaign-Intervention-by-Section-501(c)(3)-Tax-Exempt-Organizations)

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