LEAGUE OF WOMEN VOTERS

CONVERSION FROM IRC SEC. 501(c)(4) TO IRC SEC. 501(c)(3)

THOMAS P. CARSON
(818) 840-0417
tpcarson@outlook.com

June 2016

FOREWORD

This document sets forth a general description of the issues which may be involved in the conversion of a League of Women Voters organization from a tax exempt status under IRC §501(c)(4) to a similar status under IRC §501(c)(3). Although most Leagues are very similar in their operations, there are occasions where an individual League may differ significantly in one or more areas from what is described in this document. Accordingly, all Leagues considering such a conversation should contact the author, Tom Carson [(818) 840-0417, tpcarson@outlook.com] before proceeding, to be sure that all important issues for each League are addressed.

Table of Contents

SECTION 1. OVERVIEW OF CONVERTING TO §501(c)(3) TAX STATUS

As with many tax issues, a League's decision to change tax status under §501(c) should be carefully considered by its Board of Directors. Each League's individual situation has to be carefully reviewed to identify the potential advantages and disadvantages. LWVUS is not willing to make a blanket recommendation for or against such a conversion by state or local Leagues because local conditions can significantly impact the decision. But LWVUS has undertaken to provide necessary and substantial support to state and local Leagues to enable them to convert if they decide to do so.

Background

Different types of organizations can qualify as tax exempt under Internal Revenue Code §501(c)—e.g., charities, churches, schools, hospitals, trade associations—and many of these different types have their own specific rules under the Internal Revenue Code.

Historically most Leagues have qualified as tax exempt organizations under §501(c)(4), which provides rules for organizations promoting social welfare or civic leagues. Over the years, LWVUS, most state Leagues and larger local Leagues have formed a "sister" Education Fund entity which is qualified as tax exempt under §501(c)(3).

There are only a few significant differences between §501(c)(4) and §501(c)(3), not all of which have relevance for Leagues to consider:

1. A §501(c)(4) organization can support or oppose candidates for elected office and political parties, while a §501(c)(3) organization cannot. However, this difference is irrelevant for League organizations, as our own internal LWV rules prohibit this kind of political activity.

2. There is no limit on the lobbying activities of a §501(c)(4) organization, whereas a §501(c)(3) organization's lobbying activities cannot constitute a "substantial part" of its overall activities. As further discussed below, the latter limitation should not impact in any way the operations of a typical League which converts to §501(c)(3) status.

3. Contributions and member dues are deductible for donors and members of a §501(c)(3) organization, unless (a) the funds are specifically designated by the donor or member to fund a lobbying expenditure, or (b) to the extent the member or donor receive something of value in exchange for the dues or contribution. Contributions and dues for §501(c)(4) organizations are not deductible for donors and members.

The ability to conduct both advocacy and lobbying activities is very important for many League members. There is no limitation at all on pure advocacy (i.e., does not involve specific

legislation or ballot measures) under either §501(c)(3) or (c)(4). Provided that a §501(c)(3) organization makes an election under §501(h), the measurement of lobbying for purposes of this "substantial part" test is based on dollars spent rather than time spent. The threshold for determining what is "substantial" is not met for organizations the size of local, regional or most state Leagues unless lobbying expenditures exceed 20% of an organization's total annual expenditures.

This §501(h) rule is favorable to Leagues, because with the exception of LWVUS and some state Leagues, lobbying is normally conducted only by members on a volunteer basis, with little or no out-of-pocket expenditures. Local Leagues not infrequently lobby at City Councils or County Boards of Supervisors, but these activities typically do not involve out of pocket expenditures. Even LWVUS and state Leagues which have staff somewhat involved in lobbying have historically not come close to the 20% threshold. So from a practical standpoint the §501(c)(3) limitation on lobbying activities would not impose any practical limitations on local or state League lobbying activities or operations. See Appendix IV for a further discussion of lobbying.

At the same time, §501(c)(3) organizations must definitely keep track of their lobbying expenditures within their accounting records so that upon any IRS audit they could demonstrate that there has been no violation of the "substantial part" test. If a League files Form 990 or 990-EZ, it must complete Schedule C, Part II-A regarding its lobbying expenditures, etc.; Leagues filing e-Postcards do not have this reporting obligation. Some states also require filings on this subject, even if the League only files a state e-Postcard. See Appendix IV for material on reporting and record-keeping requirements.

Actual §501(c)(3) Conversions of State and Local League of Women Voters Organizations

As of June 2016, 28 local Leagues in California have converted or are in the process of converting to §501(c)(3) status, some in 2011 and some later, some single entity Leagues and some dual entity Leagues. Five years ago LWV Wisconsin, along with its 17 single entity local Leagues, converted to §501(c)(3). In 2013 LWV Minnesota converted, and so far has gotten 17 of its 34 local Leagues to convert as well. In 2015 LWV Oregon (dual entity) converted, and is still in the process of getting its local Leagues to convert as well. In 2015 LWV St. Louis converted, in 2016 three Leagues in Texas are converting. Most of the converted local Leagues were single entities, but a number already converted or in the process of converting are dual-entity local or state Leagues consolidating into a single §501(c)(3) entity. From discussions with the leaders of all of these converted Leagues, none have found any problems or unforeseen consequences resulting from their League's conversion of status.

Pros and Cons of Applying to Change from §501(c)(4) to §501(c)(3)

The greatest potential benefit from a local League qualifying under §501(c)(3) would be the benefits to members and donors because of the tax deductibility of all of the membership dues and contributions needed for their operations (again, except for contributions which are

specifically designated by the donor to fund a lobbying expenditure, or to the extent the member or donor receive something of value in exchange for the dues or contribution). This can include in-kind contribution such as occurs when members attend the LWVUS or state League conventions or councils and absorb some or all of the cost of attendance. Members/donors can currently receive tax deductions for contributions to a local League's Ed Fund at LWVUS or their state League, but those contributions cannot be used for a significant portion of a League's normal operating budget, including annual meetings, membership expenses and advocacy. Conversion allows deductibility for all funds needed to support a League's total budget.

It is certainly likely that most local and state Leagues will achieve some increase in contributions after a conversion, but it will be difficult to calculate how much because of all the different factors which impact on contributions levels from year to year. Deductibility is not likely to motivate a person to make a contribution if they are not interested in the League's mission, but larger contributors not infrequently look at the after-tax cost of contributions, and adjust the amount of their contribution based on tax deductibility.

As a general matter, agencies and foundations are willing to give grants to §501(c)(3) organizations but not to other types of exempt organizations. So conversion might give local Leagues greater opportunities to obtain such grants if they are available in their communities. Further, some vendors (e.g., PayPal) give discounts to §501(c)(3) organizations but not other tax exempt organizations; also, companies like Amazon have donation programs for such organizations.

Conversion will reduce the workload for local and state League, as there will no longer be any need to have tax-deductible contributions be sent to an Ed Fund account at either LWVUS or a state League, or to have to seek reimbursements sent back to a League. Additional workload reductions are possible for dual-entity Leagues which consolidate into one organization, with less work for boards of directors, nominating committees, budget committees, etc.

Concerns have been raised by some individuals that under §501(c)(3) Leagues would have to stop all advocacy; but, as discussed above, this is entirely erroneous. The actual limits on lobbying expenditures under this law are very unlikely to impact any League.

Concerns have also been raised that there is a horrendous burden in bookkeeping and governmental reporting; this also is entirely erroneous.

There have also been questions raised about the tax consequences of a §501(c)(3) organization making large annual Per Member Payments to LWVUS, which is §501(c)(4), and most state Leagues, which are also still §501(c)(4). The issue of PMPs, how they are calculated, how the recipients can and do use these funds, why they should be considered to be exempt purpose expenditures for §501(c)(3) organizations, etc., were explored in extensive detail during the IRS' review of several California local League's applications to qualify under §501(c)(3), and all of these issues were resolved favorably so that the IRS approved these League's applications. See Appendix VI for more details on this issue.

Finally, concerns have been raised about having to send thank-you letters to contributors to ensure tax deductibility. Of course the IRS does require written confirmation of individual contributions of $250 or more. However, it would be expected that any League would already be thanking persons making such a significant contribution, so there should be no incremental burden from converting to §501(c)(3). Actually, many League write thank-you letters every year to every single contributor, no matter how small the amount.

SECTION 2. STEPS TO CONVERT SINGLE-ENTITY LEAGUES TO §501(c)(3)

(1) If a single entity League wishes to convert to §501(c)(3), it must amend its articles of incorporation (if it is incorporated, as most are) and its bylaws (whether incorporated or not) to include specific language which is required by the IRS.

(a) First, within the purposes sections of these documents, the following language should be inserted in its entirety, either as a replacement to existing language referencing §501(c)(4) or just as additional language:

> *_____ is organized and operated exclusively for charitable purposes under Section 501(c)(3) of the Internal Revenue Code, or the corresponding section of any future federal tax code. Notwithstanding any other provision of these Articles, _____ shall not carry on any other activities not permitted to be carried on by a corporation exempt from Federal Income Tax under such provisions of the Internal Revenue Code. No substantial part of the activities of _____ shall be attempting to influence legislation.*

(b) Secondly, the following language should be inserted as a "dissolution" clause, either to replace existing language or as additional language. The IRS requirement is that the assets upon dissolution must go to another §501(c)(3) organization. Many Leagues currently specify either the LWVUS or their state League as the named recipient upon dissolution, but at the present time the LWVUS and most state League are §501(c)(4) organizations, and thus are not eligible recipients under a §501(c)(3) dissolution clause. Of course three state Leagues have already converted to §501(c)(3) status, and others are considering conversion, but the following language meets the IRS requirement while providing flexibility as to the appropriate League recipient entity:

> *In the event of the merger or dissolution of _____ for any reason, all money and securities or other property of whatsoever nature which at the time be owned or under the absolute control of _____ shall be distributed at the discretion of the board, or such other persons as shall be charged by law with the liquidation or winding up of _____ and its affairs, to any member organization of the League of Women Voters national organization which is exempt under Section 501(c)(3) of the Internal Revenue Code or the corresponding section of any future federal tax code; or if none of these organizations are then in existence or exempt under those tax provisions, then, at the discretion of the board, to another organization which is organized and operated exclusively for charitable and educational purposes and which has established its tax-exempt status under such designated tax provisions.*

Many League bylaws provide that the bylaws can only be amended by obtaining a specific level of member approval at an annual meeting or convention; while some League bylaws allow special member meetings to be called for this purpose. Typically, there is nothing

in League articles or bylaws about the appropriate way to amend articles of incorporation, although there may be provisions in state corporation codes. So far most Leagues have concluded that they should amend their articles following the same procedures applicable to bylaws amendments. In some states, all amendments to the articles of incorporation have to be filed with a state agency, often a Secretary of State's office, in order to be legally effective.

A number of states classify tax exempt organizations as either "public benefit corporations or organizations" or "mutual benefit corporations or organizations." The first classification usually includes both §501(c)(3) and (c)(4) organizations, while the second classification includes all other exempt organizations. Almost all Leagues in these states should naturally be classified as public benefit corporations, but for various historical reasons some are classified as mutual benefit corporations. It is likely that it will be necessary for such Leagues to first have this misclassification corrected through amendments of their articles of incorporation, before they will be able to file the above described amendments to convert to §501(c)(3) status.

(2) If a League has had revenues of $50,000 or less in each of the preceding three years; projects no more than $50,000 in revenues in each of the next three years; and does not currently have assets in excess of $250,000 (all of which are true for most local and state Leagues), then that League can file an online Form 1023-EZ application with the IRS to qualify under §501(c)(3). The League must first complete a questionnaire included in the Form 1023-EZ Instructions, but there should be no problem for a League organization of this size to successfully answer the questionnaire. The Form 1023-EZ itself is a simple four-page online form; payment of a $275 fee (effective July 1, 2016) is necessary to complete the filing. (See Appendix I for a discussion about certain of the questions included in the application.)

The experience of California and other local Leagues in using this new application process has been that there was no apparent IRS review of the applications, and they received their IRS determination letters granting §501(c)(3) status within 3-4 weeks after the date of the online filing. However, two of our California local Leagues recently filing the Form 1023-EZ received a letter requesting significant information about the operations of the League and the nature of its lobbying activities. (See Appendix II for an excerpt from the IRS' letter.) These League have responded to the request, one has received their IRS determination letter and the other is currently awaiting a response from the IRS. LWVUS is able to assist any Leagues to respond to this kind of inquiry.

(3) Leagues which cannot to file a Form 1023-EZ because of their size will have to file a full Form 1023 application for conversion to §501(c)(3), with a fee of $850. This application is not automatic, but will be subject to a thorough review by an IRS agent. We have available a template of information for use in completing Form 1023 which will make completion of the application much easier. Due to the reduced budget of the IRS, it can be expected that the IRS' review of such applications will not begin for over six months after the form is filed, and the review process itself could take another six to twelve months.

(4) Many state tax authorities will automatically follow the IRS' determinations on qualification for a particular exempt status. However, in some instances the League may have to

file a form with its state taxing authority about its new tax status, and transmit a copy of its IRS determination letter.

(5) Once qualified under §501(c)(3), all League should file a Form 5768 with the IRS, making the election under §501(h) to measure its lobbying activities by dollars spent rather than time spent. This election may be terminated by an electing League, but cannot be challenged by the IRS. The election is effective as of the later of the beginning of the tax year in which it is filed or the effective date of its new tax status.

(6) Upon receipt of its IRS determination letter, the League should request from either LWVUS or its state League a refund of any funds held for it in its Ed Fund account.

(7) The League should update its website to reflect its new tax status, and seek other ways to publicize this conversion.

(8) The League should notify the author, Tom Carson (tpcarson@outlook.com), of its successful conversion.

(9) If the local League has been included in its state League's §501(c)(4) group exemption, it will have to withdraw from that exemption because all organizations within a group have to be exempt under the same Code section. At the time it files the Form 1023-EZ, it should notify its state League that it is withdrawing its existing authorization to the state League to be included in the group. That way there will be no gap in its exempt status.

Each such converting League leaving a group exemption will have to contact the IRS Exempt Organization office at (877) 829-5500, and request that the IRS establish a "data sheet" for it in the IRS system. In order to be eligible to do this, it must be qualified as an exempt organization, and have the appropriate organizational documents (i.e., articles of incorporation and/or bylaws), although it will not have to provide copies of these to the IRS at the time of the call.

See Appendix VII for a more detailed look at group exemptions.

SECTION 3. STEPS TO CONVERT DUAL-ENTITY LEAGUES TO §501(c)(3) BY MERGING A LEAGUE INTO ITS EDUCATION FUND

Larger local Leagues and most state Leagues have a dual-entity structure: the League entity is qualified under §501(c)(4) and its related Education Fund is qualified under §501(c)(3). Conversion of the League in this situation to §501(c)(3) status can be accomplished in one two ways: (a) consolidating the assets and operations of the League entity into its Education Fund; or (b) having the League convert to §501(c)(3) status, and then consolidate the assets and operations of the Education Fund into the League. If both the League and its Education Fund are corporations, the consolidation can be done by merger if desired.

It is expected that most dual-entity Leagues will convert by consolidation into an existing Education Fund. However, if the Education Fund is in the form of a charitable trust there may be complexities in its trust agreement which would preclude this alternative. If the first method is being used, the following steps are needed to achieve the desired result (see Section 4 for a discussion of the second method and also Appendix III for a projected timeline for this process):

(1) An Education Fund will already have §501(c)(3) language in its articles of incorporation and bylaws, but this language may not fully meet the IRS' current standards. As noted in the prior Section 2, the two key sections must reflect the following:

(a) First, within the "purpose(s)" sections of the articles and bylaws, the following language should be inserted in its entirety, either as a replacement of existing language or just as additional language:

> *_____ is organized and operated exclusively for charitable purposes under Section 501(c)(3) of the Internal Revenue Code, or the corresponding section of any future federal tax code. Notwithstanding any other provision of these [Articles or Bylaws], _____ shall not carry on any other activities not permitted to be carried on by a corporation exempt from Federal Income Tax under such provisions of the Internal Revenue Code. No substantial part of the activities of _____ shall be attempting to influence legislation.*

(b) Secondly, the "dissolution" clause should reflect the following language:

> *In the event of the merger or dissolution of _____ for any reason, all money and securities or other property of whatsoever nature which at the time be owned or under the absolute control of _____ shall be distributed at the discretion of the board, or such other persons as shall be charged by law with the liquidation or winding up of _____ and its affairs, to any member organization of the League of Women Voters national organization which is exempt under Section 501(c)(3) of the Internal Revenue Code or the corresponding section of any future federal tax code; or if none of these organizations are then in existence or exempt under those tax provisions, then, at the discretion of the board, to another organization which is organized and*

operated exclusively for charitable and educational purposes and which has established its tax-exempt status under such designated tax provisions.

(2) The League of Women Voters of Wisconsin was the first dual-entity League to consolidate its operations into its Education Fund. At the time, it decided to keep its former League entity in existence (still qualified under §501(c)(4)) for possible use in the future for lobbying activities. This precedent has been followed by other dual-entity Leagues even though LWV Wisconsin has since decided to dissolve its former League entity because it has not found any real use for it. If so preserved, the League entity will typically become a non-member organization, with much simplified bylaws because it is likely to be inactive for the near future.

After consolidation the Education Fund should change its name to something like that of the League entity's traditional name, and the inactive League entity will adopt some new name.

The consolidated Education Fund will need to have bylaws appropriate for an operating League, with members, fully participating in the national League of Women Voters organization. The easiest way to amend the Education Fund's bylaws seems to be to have the Education Fund adopt the League entity's prior bylaws, possibly with some amendments. These bylaws will already be familiar to the League's members, and have been designed specifically for the kind of entity the Education Fund is becoming.

(3) There should be no need to file any kind of application with the IRS or state tax authority regarding this consolidation, as an Education Fund will already have a determination letter regarding its status under §501(c)(3). Absent very unusual circumstance, adding the assets and operations of the League entity should not put that status in jeopardy, as witnessed by the many Leagues which has already qualified under §501(c)(3). However, any Leagues and/or its Education Funds which have to file Form 990-EZ or Form 990 will have to file copies of their newly amended bylaws with their next federal return, with explanation of the significant changes from its prior bylaws. This requirement may also be true for state income tax filings.

(4) It should be relatively easy to transfer basic League assets, such as cash, securities, furniture, files, etc. to the Education Fund. However, a League may have other assets, or contractual arrangements such as office or copier leases, which can be more complex to transfer, and sufficient time must be allowed to address these issues.

(5) In some states, a League may have to apply to a state agency which oversees exempt organizations for review or approval of the transfer of assets/operations out of the exempt organization, so that the agency can be satisfied that the assets are not being diverted from their exempt purpose. For example, in California a consolidating League must apply to the Registry of Charitable Trusts within the California Attorney General's office in advance of the actual transfer so that this agency may be satisfied that the assets are maintained for their intended purpose.

(6) Following the consolidation, the Education Fund must file a Form 5768 with the IRS, making the election under §501(h) to measure lobbying activities by dollars spent rather than time spent.

(7) The Education Fund should update its website to reflect the new structure, and seek other ways to publicize this conversion.

(8) The League should notify the author, Tom Carson (tpcarson@outlook.com), of its successful conversion.

(9) If the consolidating League is a state League which has obtained a group exemption for its local Leagues, the consolidation process under the first method will result in its ceasing to qualify as the "central organization" of its group, and the group exemption will no longer be in effect for any of the participating local Leagues. Each such local League will have to contact the IRS Exempt Organization office at (877) 829-5500, and request that the IRS establish a "data sheet" for it in the IRS system. In order to be eligible to do this, it must be qualified as an exempt organization, and have the appropriate organizational documents (i.e., articles of incorporation and/or bylaws), although it usually will not have to provide copies of these to the IRS at the time of the call. Any such local League should be able to qualify as tax exempt under §501(c)(4) as it was so qualified under the group exemption.

See Appendix VII for a more detailed look at group exemptions.

SECTION 4. STEPS TO CONVERT DUAL-ENTITY LEAGUES TO §501(c)(3) BY MERGING AN EDUCATION FUND INTO ITS LEAGUE

Section 3 discussed the conversion of a dual-entity League into a single §501(c)(3) organization by transferring the assets and operations of the League into its Education Fund. This section discusses the alternative approach, transferring the assets and operations of an Education Fund into its League.

(1) In order to convert to §501(c)(3) status, the League must amend its articles of incorporation (if it is incorporated, as most are) and its bylaws (whether incorporated or not) to include specific language which is required by the IRS.

(a) First, within the purposes sections of these documents, the following language should be inserted in its entirety, either as a replacement to existing language referencing §501(c)(4) or just as additional language:

> *_____ is organized and operated exclusively for charitable purposes under Section 501(c)(3) of the Internal Revenue Code, or the corresponding section of any future federal tax code. Notwithstanding any other provision of these Articles, _____ shall not carry on any other activities not permitted to be carried on by a corporation exempt from Federal Income Tax under such provisions of the Internal Revenue Code. No substantial part of the activities of _____ shall be attempting to influence legislation.*

(b) Secondly, the following language should be inserted as a "dissolution" clause, either to replace existing language or as additional language. The IRS requirement is that the assets upon dissolution must go to another §501(c)(3) organization. Many Leagues currently specify either the LWVUS or their state League as the named recipient upon dissolution, but at the present time the LWVUS and most state League are §501(c)(4) organizations, and are not eligible recipients under a §501(c)(3) dissolution clause. Of course some state Leagues have converted to §501(c)(3) status, and others are considering conversion, but the following language meets the IRS requirement while providing flexibility as to the appropriate League recipient entity:

> *In the event of the merger or dissolution of _____ for any reason, all money and securities or other property of whatsoever nature which at the time be owned or under the absolute control of _____ shall be distributed at the discretion of the board, or such other persons as shall be charged by law with the liquidation or winding up of _____ and its affairs, to any member organization of the League of Women Voters national organization which is exempt under Section 501(c)(3) of the Internal Revenue Code or the corresponding section of any future federal tax code; or if none of these organizations are then in existence or exempt under those tax provisions, then, at the discretion of the board, to another organization which is organized*

and operated exclusively for charitable and educational purposes and which has established its tax-exempt status under such designated tax provisions.

Many League bylaws provide that the bylaws can only be amended by obtaining a specific level of member approval at an annual meeting or convention; while some League bylaws allow special member meetings to be called for this purpose. Typically, there is nothing in League articles or bylaws about the appropriate way to amend articles of incorporation, although there may be general provisions in state corporation codes. So far most Leagues have concluded that they should amend their articles following the same procedures applicable to bylaws amendments. In any event, all amendments to the articles of incorporation typically have to be filed with a state agency, often a Secretary of State's office, in order to be legally effective.

A number of states classify tax exempt organizations as either "public benefit corporations or organizations" or "mutual benefit corporations or organizations." The first classification usually includes both §501(c)(3) and (c)(4) organizations, while the second classification includes all other exempt organizations. Almost all Leagues in these states would naturally be classified as public benefit corporations, although for various historical reasons some are classified as mutual benefit corporations. It is likely that it will be necessary for such Leagues to first have this misclassification corrected through amendments of their articles of incorporation, before they will be able to file the above described amendments to convert to §501(c)(3) status.

(2) If a League has had revenues of $50,000 or less in each of the preceding three years; projects no more than $50,000 in revenues in each of the next three years; and does not currently have assets in excess of $250,000 (which is certainly true of most local and state Leagues), then that League can file an online Form 1023-EZ application with the IRS to qualify under §501(c)(3). The League must first complete a ten-page questionnaire which is included in the Form 1023-EZ Instructions, but there should be no problem for a League organization of this size to successfully complete the questionnaire. The Form 1023-EZ itself is a simple four-page online form; payment of a $275 fee (effective July 1, 2016) is necessary to complete the filing. (See Appendix I for a discussion about certain of the questions included in the application.)

The experience of California and other local Leagues in using this new application process has been that there was no apparent IRS review of the applications, and they received their IRS determination letters granting §501(c)(3) status within 3-4 weeks after the date of the online filing. However, two of our California local Leagues recently filing the Form 1023-EZ received a letter requesting significant information about the operations of the League and the nature of its lobbying activities. (See Appendix II for an excerpt from the IRS' letter.) These League have responded to the request, one has received their IRS determination letter and the other is currently awaiting a response from the IRS. LWVUS is able to assist any Leagues to respond to this kind of inquiry.

(3) Leagues which cannot to file a Form 1023-EZ because of their size will have to file a full Form 1023 application for conversion to §501(c)(3), with a fee of $850. This application is not automatic, but will be subject to complete review by an IRS agent. We have available a template of information for use in completing Form 1023 which will make completion of the

application much easier. Due to the reduced budget of the IRS, it can be expected that the IRS' review of such applications will not begin for over six months after the form is filed, and the review process itself could take six to twelve months.

(4) Many state tax authorities will automatically follow the IRS' determinations on qualification for a particular exempt status. However, in some instances the League may have to file a form with its state taxing authority about its new tax status, and transmit a copy of its IRS determination letter.

(5) It should be relatively easy to transfer basic Education Fund assets, such as cash, securities, furniture, files, etc. to the League. However, the Education Fund may have other assets, or contractual arrangements such as office or copier leases, which can be more complex to transfer, and sufficient time must be allowed to address these issues.

(6) In some states, the Education Fund may have to apply to a state agency which oversees exempt organizations for review or approval of the transfer of assets/operations out of the exempt organization, so that the agency can be satisfied that the assets are not being diverted from their exempt purpose. For example, in California a consolidating Education Fund must apply to the Registry of Charitable Trusts within the California Attorney General's office in advance of the actual transfer so that this agency may be satisfied that the assets are maintained for their intended purpose.

(7) The League must file a Form 5768 with the IRS, making the election under §501(h) to measure lobbying activities by dollars spent rather than time spent.

(8) The League should update its website to reflect the new structure, and seek other ways to publicize this conversion.

(9) The League should notify the author, Tom Carson (tpcarson@outlook.com), of its successful conversion.

(10) If the consolidating League is a state League which has obtained a group exemption for its local Leagues, there will be no problem of the state League ceasing to qualify as the "central organization" of its group, and the group exemption will remain in effect.

SECTION 5. CONVERTING TO §501(C)(3) STATUS THROUGH A GROUP EXEMPTION REQUEST

The group exemption request process is an Internal Revenue Service administrative procedure established to facilitate the processing of applications of controlled groups of similar organizations to achieve a common tax exempt status. The basic requirements are that (a) there be a central organization (e.g., a state League) which has "control" (a term which is not defined by the IRS) over (b) a number of subsidiary organizations with similar characteristics and operations (e.g., local Leagues). This procedure is designed to simplify the work of both the IRS and the applicants in going through the application process. The associated filing fee for this application is a flat amount of $3,000, no matter how many organizations are included in the request.

In 2007, LWV Wisconsin filed a group exemption request for the 17 local Leagues in Wisconsin to convert from §501(c)(4) to §501(c)(3). After a long delay, the IRS approved this request in mid-2011. In 2013, LWV Minnesota itself converted to §501(c)(3), and is in the process of assisting its local Leagues in Minnesota to similarly convert. However, LWV Minnesota did not use the group exemption request process to convert their status, but an alternative legal structure; see Section 6 for a discussion of their structure.

In April 2012, LWV California filed a group exemption request similar to that of LWV Wisconsin, covering 35 local Leagues in California. After a very long wait to have an IRS reviewing agent assigned to review this request, and a brief period of communication with this agent, the IRS denied LWV California's right to use the group exemption process. The following is a quote from the IRS' letter dated April 3, 2014, explaining the reason for their denial:

> *Revenue Procedure 2014-4 section 8.01 states the Internal Revenue Service (IRS) ordinarily will not issue a letter ruling or determination letter in certain areas because of the factual nature of the problem involved or for other reasons. It also states the IRS may decline to issue a letter ruling or a determination letter, when appropriate, in the interest of sound tax administration or when warranted by the facts or circumstances of a particular case. For example, the IRS has determined that group exemption is not appropriate when the activities of the subordinate organization(s) present special issues for consideration.*
>
> *The complexities involved and the uncertainty of continuing compliance concerning the various types and amount of legislative activities your subordinates are involved in renders them inappropriate for exemption on a group basis under Section 501(c)(3). We therefore decline to issue a ruling that recognizes your subordinates exempt as a group under Section 501(c)(3).*

This explanation is actually very inaccurate as to the underlying facts, and does not even reflect what the agent and her supervisor told me over the telephone prior to the issuance of this letter. It was made clear in the group exemption request sent to the IRS that the Leagues involved had very minimal legislative activity, and described what kind of activity was involved.

The agent and the supervisor specifically stated that their decision resulted from their office policy requiring the review of §501(c)(3) applications of any organization which was significantly involved in voter registration and voter education activities. They concluded that this meant that they had to review the applications of each of the local Leagues, thereby making the group exemption request procedure meaningless. And because the group exemption request process is an IRS administrative procedure, there was no right of appeal of their decision.

The IRS made it clear that their decision did not address whether any of the local Leagues could qualify under §501(c)(3). In fact, in their letter they stated:

> *Each subordinate may, however, file for tax-exempt status under Section 501 (c)(3) on its own by filing Form 1023, Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code, and paying the appropriate user fee.*

It should be noted that just prior to this discussion, in November 2013, the IRS had issued proposed regulations under §501(c)(4) which among other changes would characterize voter registration, voter education and certain candidate forums to be "candidate-related political activity." In conjunction with the issuance of these proposed regulations, the IRS raised questions as to whether such changes should also be applied to §501(c)(3) organizations. From the tenor of my telephone conversation with the IRS, it seemed clear that they were intending to extend these proposed new concepts to the latter kind of organization, although they made no specific reference to the proposed regulations.

The release of the proposed regulations provoked a massive amount of pushback from a broad spectrum of groups and organizations, and the IRS said they would issue revised regulations after considering these responses. They have also said that they wanted to avoid having the timing of their revised proposed changes to §501(c)(4) impact a particular national election. And then Congress in late 2015 passed a law prohibiting the IRS from amending §501(c)(4) at all.

So the key question is whether the IRS' "internal policy" which caused the IRS to deny LWV California's group exemption request in 2014 is still in effect. If they have decided to pull back from many of the changes which they were considering with the proposed regulations, then it would seem possible that they would also have pulled back from that internal policy. To pursue this, as an individual I contacted the IRS' EO Correspondence Office to raise this question (as I had been advised to do by the IRS Help Line's personnel), but I have not had any response from them at all.

It might be worthwhile for a state League which wants to use a group exemption request to contact the IRS EO Correspondence Office and try to get a clarification on this question much sooner. Presumably an inquiry from a potential "central organization" would get a better response than I could get as an individual.

SECTION 6. CONVERTING TO §501(c)(3) STATUS THROUGH USE OF THE NONPROFIT LLC STRUCTURE

As an alternative to using a group exemption request, LWV Minnesota developed a very creative approach which involves a bit more work in getting each local League converted, but which avoids having to apply to the IRS for a determination letter for the local Leagues.

As a first step, LWV Minnesota converted to §501(c)(3) status through the structure described in Section 3, transferring its assets and operations into its Education Fund. The conversion of its local Leagues to that same status is accomplished through the use of a legal entity called a "nonprofit limited liability company" or "nonprofit LLC."

In basic terms, an LLC is like a partnership with corporate characteristics. An LLC with only a single member is treated as a "disregarded entity," so that from a tax perspective it is "looked through" and its income and expenses are reported in the tax returns of its "member" rather than being subject to tax reporting by the LLC. But in most other ways the LLC is typically treated like a corporation, e.g., its members are shielded from liability from the operations of the LLC.

In the context of the Leagues in Minnesota, the conversion is accomplished by each local League transferring its assets and operations into its own newly formed nonprofit LLC, with its own officers and directors, bylaws, etc. The only "member" of each such nonprofit LLC is LWV Minnesota, and because the state League is qualified under §501(c)(3) then each of these nonprofit LLC automatically is also qualified in the same tax status. On an annual basis the nonprofit LLCs do not have to file tax returns with the IRS, as all of their income and expenses are consolidated into the state League's tax filings.

Before deciding to pursue this approach, very careful research has to be done regarding the nonprofit LLC form in a League's state, as its existence is determined under state law, and provisions of the related law vary from state to state. Further, it is not unusual that a state may charge a significant fee to apply to form a new nonprofit LLC, which might be more than a local League can afford. Further, some states may impose an annual tax or fee on the LLC.

SECTION 7. INCOME TAX FILINGS AND RECORDS MAINTENANCE AS A §501(c)(3) LEAGUE

The annual tax filings and the proper maintenance of records and information regarding lobbying activities and expenditures is extremely important for §501(c)(3) organizations, and the Internal Revenue Service is very emphatic about an organization's compliance with correct filings and records requirements. See, for example, Regs. §56.4911-6. As discussed below, it would be very appropriate for all Leagues in this tax status to make the status of their lobbying activities a required topic at each meeting of its Board of Directors. Appendix IV attached has a template which could be used for reporting information about each League lobbying activity, and copies of the completed reports should be sent to the Board of Directors and maintained in the League's permanent files.

Annual Filings

A League's conversion to tax exempt status under §501(c)(3) does not change its basic Federal and state filing requirements. The same rules will continue to apply in determining whether a League should file Forms 990, 990-EZ or 990-N with the IRS or typically with state filings. However, all Leagues in this status should have filed a §501(h) election with the IRS on Form 5768.

If a League is eligible to file the IRS e-Postcard, Form 990-N (gross receipts normally $50,000 or less, total assets $250,000 or less), there is no additional information required to be reported to the IRS annually related to lobbying expenditures, etc. (This has been directly confirmed with the IRS Tax Exempt Organization support group.) However, additional emphasis must be placed on internal record maintenance, as discussed below.

Leagues which have to file Form 990-EZ or Form 990 must Schedule C and complete Parts I-B and II-A. No League should have any amounts reportable on Questions 1 or 2 of Part I-B, and should be able to answer "No" to Questions 3 and 4-a. Overall, it should be noted that Leagues will typically have very minimal lobbying expenditures or grass roots communications expenditures, so the questions in Part II-A, although long, are not that difficult to answer.

Records Regarding Voter Service Activities

In recent years, the IRS has expressed strong concerns about voter registration and voter education activities, indicating their belief that there might be a high probability that such activities are conducted in a partisan way so as to benefit a political party or a political candidate. This concern of the IRS has been directed at organizations qualified under both §501(c)(4) or §501(c)(3), but is obviously of greater concern for the latter, as such partisan activity is prohibited for them.

Accordingly, all Leagues should maintain clear evidence in their files about their voter registration and voter education activities, to demonstrate the non-partisan way in which such

activities are planned and conducted. Records regarding voter registration activities should note not only the date and time of such activities, but also information about the setting and about any organizations which the League worked with in conducting such events. Records regarding candidate forums, such as correspondence with candidates, forum ground rules, moderator scripts, tapes of the events, etc., should be maintained, along with policies about candidate forums published by LWVUS, the state League, the local League itself.

Lobbying Expenditures: Background

The definition of "lobbying" for tax purposes is closer to the League concept of "action" than the broader term "advocacy;" lobbying is a subset of advocacy. The key concept is that issue advocacy does not constitute lobbying if the advocacy does not involve a reference (a) to specific proposed legislation or legislative changes; or (b) to a specific referendum, initiative, constitutional amendment, or similar procedure which will appear on a ballot.

There are two types of lobbying--direct lobbying and grass-roots lobbying. The term "direct lobbying" in turn includes two types:

(a) communications with any member or employee of a legislative body, or with any other government official or employee who may participate in the formulation of legislation, to support or oppose a specific piece of legislation. "Legislation" includes the introduction, amendment, enactment, defeat, or repeal of Acts, bills, resolutions, or similar legislative activities by the U.S. Congress, any state legislature, any local council, or similar legislative body; and

(b) attempting to influence the public (including our members) to support or oppose specific measures to be placed on a ballot, such as a referendum, ballot initiative, constitutional amendment, or similar procedure.

Legislation does not include actions by executive, judicial, or administrative bodies, such as housing authorities, sewer and water districts, zoning boards, and other similar Federal, State, or local special purpose bodies, whether elective or appointive.

"Grass roots lobbying" means communications with the public (including League members) to urge them to contact their legislator, etc., to support or oppose specific legislation.

Typical Lobbying Expenditures of a League

A common, though not necessarily frequent, type of lobbying for local Leagues is to support or oppose legislation at their local government level: County Board of Supervisor, City Council, etc. Local League activities would involve a League member attending meetings of the applicable legislative bodies to make a verbal presentation on behalf of their League; or writing a letter to the editor of the local newspaper. If this is done by a member volunteer, there is likely to be only relatively minor related out-of-pocket expenses for mileage or parking or printed handouts, all of which would be classified as direct lobbying expenditures if paid for by a

League. Even if reimbursement is possible under the local League's policies, many members never seek reimbursement. However, all members should be urged to turn in an expense report providing the details of the expenses, even if still refusing to accept reimbursement.

If the League also communicated with its members and friends, such as in the League's website or newsletter, asking them to support or oppose specific legislation by contacting their appropriate representative(s) to vote for or against the legislation, the cost of this communication would be classified as grass roots lobbying.

A more common type of League lobbying is communicating to members and friends the positions of the local League on a local ballot measure, and/or the positions of a state League on statewide ballot propositions. These may be reproduced in a League's VOTER, other member communication, on the League website, as an advertisement in local media, or even printed for local distribution. The costs of the VOTER, member communication, website, etc., allocable to the local or state League content would all be direct lobbying expenditures, as would the cost of any advertisement or handouts.

If League employees are involved in any kind of lobbying activities, whether by lobbying themselves or by helping others to prepare for testimony or communicating with member or friends, a portion of the employee's "cost" must also be identified and recorded as direct and/or grass roots lobbying expenditures. When allocating a portion of the costs of employees, it is necessary to determine the "fully-loaded" costs of the time spent by the employee to directly conduct lobbying activities or to support League members conducting lobbying activities. "Fully-loaded" means that the appropriate costing includes not only direct payroll costs, but also employee benefits plus an allocable share of office expenses such as rent, communications, etc. The time spent arranging meetings, preparing materials for meetings or mailings, as well as the costs thereof, would also be included. All of this time should be recorded as it occurs.

If League members use the League's office for meetings or other work directly related to the lobbying activities, it will also be necessary to calculate the "cost" of the space or other assets so utilized for the time period involved. Of course, a 'rule of reason' should apply to avoid incredibly detailed calculations for very small items.

See Appendix IV for a sample lobbying activity report which could be used to provide documentation regarding individual lobbying projects. Also, see Appendix V for examples from the IRS regulations which distinguishes the types of activities which qualify as lobbying and which do not.

APPENDIX I: COMMENTS ON COMPLETING FORM 1023-EZ

The following are suggestions and comments on ways to complete certain of the questions on the Form 1023-EZ.

Part I, Line 8. The form requests information about the filing organization's officers and directors. It only provides space for five people, and that's all the IRS wants. Page 3 of the Form 1023-EZ Instructions provides an explanation of how to decide which five to report on.

Part II, Lines 5, 6 and 7. You have to be able to check each of these boxes or your application will fail. However, you should be able to check these boxes if you have followed the instructions in this document on amending your League's articles of incorporation and bylaws.

Part III, Line 1. The appropriate code to be used is W99.

Part III, Line 2. It is suggested that the box be checked for "Charitable" and "Educational."

Part III, Line 4. Answer this question "Yes."

Part II, Lines 5-11. You should be able to answer all of these "No." Line 6 does not refer to the reimbursement of League expenses previously paid by others.

Part IV, Line 1. The box for item "b" should be checked.

APPENDIX II: IRS LETTER REQUESTING ADDITIONAL INFORMATION REGARDING A FORM 1023-EZ APPLICATION

From the IRS: Information we need to make our determination

1. Please submit a complete copy of your original organizing document and any amendments that show proof of filing or adoption. Since you are a corporation, your Articles of Incorporation (and all amendments) must show proof of filing with your state of incorporation. We cannot accept a copy that only indicates it was sent to or received by the state.

Note: If the language in your organizing document does not sufficiently limit your purposes to those specifically described in Section 501(c)(3) and permanently dedicate your assets to purposes specifically described in Section 501(c)(3) as required for tax exemption as an organization described under Section 501(c)(3) your organizing document must be amended.

2. Please provide a detailed description of your past, present, and future activities. In general, you should include:

a. What specific activities you conduct.
b. Who participates in the activities.
c. Where you conduct the activities.
d. When or how often the activities occur.
e. What fees, if any, are charged and how you determine them.
f. What percentage of your time and resources you spend on the activities.

3. On Part III, line 4 of your Form 1023EZ, Streamlined Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code, you indicated you would attempt to influence legislation. Please describe your attempts to influence legislation in detail and state the percentage of your total expenditures and total time spent on these activities during each of your past taxable years and an estimate of your total expenditures and total time you intend to spend on these activities in the future. For purposes of calculating the percentage of expenditures, allocate salaries, administrative, overhead,

APPENDIX III: PROJECTED TIMELINE FOR CONSOLIDATION OF A LEAGUE AND ITS EDUCATION FUND

GOAL: After consolidation, LWVXXX will be a §501(c)(4) non-member shell corporation and its Education Fund will be a §501(c)(3) membership organization with all of the LWVXXX assets and operations

1. In _____, the Boards of Directors of both LWVXXX & Education Fund approve consolidation and related steps and recommend approval to members for action at the LWVXXX (and Education Fund) Annual Meeting or Convention.

2. Following step (1), but before LWVXXX Annual Meeting, the Education Fund Board takes the following steps, all contingent on LWVXXX member approval of consolidation:
   a) change name of Education Fund by amending Articles of Incorporation to LWVXXX;
   b) amend Articles of Incorporation to strengthen §501(c)(3) provisions; and
   c) restate Education Fund Bylaws to (i) change its name, (ii) strengthen the §501(c)(3) provisions and (iii) make it a membership organization (most likely done by using existing LWVXXX Bylaws as a format).

3. At its Annual Meeting, LWVXXX members:
   a) approve consolidation;
   b) change name of LWVXXX to LWV____ by amending Articles of Incorporation;
   c) amend dissolution clause in Articles of Incorporation to permit distribution of assets to a §501(c)(3) organization;
   d) restate Bylaws to (i) change its name, (ii) make it a non-member organization, and (iii) simplify officer/director structure; and
   e) adjourn LWVXXX annual meeting.

4. Education Fund opens its annual meeting:
   a) Board admits all pre-existing LWVXXX members as Education Fund members;
   b) members approve any further amendment of the Bylaws;
   c) members elect officers and directors; and
   d) members approve budget and program.

5. Completion steps (some of these vary by state, but there are likely to be such requirements in most states):
   a) If needed, LWVXXX obtains approval from any state agency with oversight over exempt organizations for the transfer of assets to Education Fund;
   b) LWVXXX files Certificate of Amendment of Articles with the appropriate state agency with oversight of corporations;
   c) After receiving necessary approvals, LWVXXX transfers assets to Education Fund except for any necessary holdback;
   d) Employees (if any) transfer to payroll of Education Fund;
   e) After LWVXXX receives certification of its Articles Amendments, Education Fund files its Certificate of Amendment of Articles with the appropriate state agency;
   f) Education Fund files Form 5768 to elect to measure lobbying activities by dollars spent.

APPENDIX IV: SAMPLE LOBBYING ACTIVITY REPORTING FORM

Please complete this form if you engage in or supervise or provide support for an activity that you believe might constitute lobbying. If you are not certain whether or not the activity is lobbying, you should consult with the President of the League. **Send copies of the completed report to both the President and the Treasurer of the League.**

Project Leader: _____

Period of Activity: From _____To_____

Briefly describe the activity (including the names of other individuals working on the activity, subject matter, bill or proposition number (if applicable), actions taken, individuals contacted, work product produced (attach copy if applicable)):

_____

_____

_____

_____

Attach a summary of any reimbursable expenditures or payments to outside vendors associated with this work (e.g. travel expenses, printing costs, etc.), even if you are not intending to seek reimbursement for such expenses.

(If a project extends over the League's year end, please prepare separate reports for each fiscal years.)

Circle the appropriate answer(s) for the questions below and provide additional information as requested:

1. What type of decision is this work an attempt to influence?
    a. Something voted on by a legislative body
    b. Something decided by an administrative agency or the executive branch, without legislative involvement
    c. An issue to be put before the voters (initiative, proposition or referendum)
    d. Something else/mixed purposes/not sure (explain on attached sheet)
2. What level of government is this work an attempt to impact the policy of (circle all that apply)?
    a. Federal
    b. State (specify) _____

c. Local (which specific body?) _____

d. Other (explain on attached sheet)

3. What was the ultimate audience for this work (circle all that apply)?

   a. Legislators, legislative staff, or other public officials

   b. The public, the media, or others who are not public officials (answer next question)

   c. Organization staff (describe what they expect to do with the work on attached sheet)

   d. Mixed/not sure (explain on attached sheet)

4. If you circled 3.b above, does the work product include (*circle all that apply*)?

   a. Language urging recipients to contact a public official

   b. Contact information (phone, address, email, etc.) for a public official

   c. A way to send a message to a public official (a web form, a fill-in postcard, etc.)

   d. Indication that a public official is opposed to, undecided on, or in a position to vote on the policy issue discussed

   e. A paid ad that ran or will run in the mass media (TV, radio, newspaper, etc.)

5. Circle any of the following that apply:

   a. The work will result in a work product that presents a complete and fair discussion or analysis of the subject (attach or describe)

   b. The work was done at the request of a public official (state the substance of the request, provide the name and title of the official, and describe the form in which the request arrived (written, oral, etc.))

   c. The work involves a policy that will directly affect our organization's existence, powers, duties, tax-exempt status, or the deductibility of contributions made to our organization (not simply an issue we care about)

Signature _____ Date: _____

Explanation of Terms

Direct lobbying occurs when the League communicates with a legislator or legislative staff about a specific piece of legislation and reflects a view for or against that legislation. Specific legislation can include proposed legislation or legislation that has already been introduced in a legislative body. For example, a letter from a nonprofit to a senator urging her to support a legislative ban on hunting dolphins would be direct lobbying.

Direct lobbying also encompasses any communication with the general public expressing a favorable or unfavorable view about a ballot initiative, referendum, bond measure, or similar procedure to be included on a ballot. In these cases, the public assumes the role of a legislative body by being the ones deciding public policy.

Grassroots lobbying is a communication with the general public (including League members) that reflects a favorable or unfavorable view on specific legislation and encourages people to contact their legislative representatives or staff in order to influence that legislation.

An organization encourages the general public to take action when it:

- Asks them to contact their legislator
- Provides the name, telephone number, email address, or other contact information of the legislator
- Offers a mechanism to contact the legislator (such as a postcard or petition), or
- Identifies legislators who will be voting on the legislation, who are undecided or opposed to the organization's position, or are the recipient's legislators

APPENDIX V: DISTINGUISHING BETWEEN ADVOCACY AND LOBBYING

The following material is largely drawn from IRS Regs. §56.4911-2. The regulations' examples have not been edited. Examples have been selected for the kinds of activities conducted by many Leagues so that the reader can easily substitute a League's name for the actual names used in the example.

To begin with, lobbying activities encompass two distinct types of activities, **direct lobbying communications** and **grass roots lobbying communications**. Assuming that an election is made under §501(h), for purposes of determining whether expenditures for lobbying activities constitute a "substantial part" of an organization's total activities, there is a 20% limit on an organization's expenditures for combined lobbying activities and a 5% sublimit for its expenditures for grass roots lobbying activities. (These percentages are applicable for organizations with no more than $500,000 of normal annual expenditures; for larger organizations there is a sliding scale as the total increases.)

Direct Lobbying Communications

A **direct lobbying communication** is any attempt to influence any legislation through communication with either one of the following:

(A) Any member or employee of a legislative body; **or**

(B) Any government official or employee (other than a member or employee of a legislative body) who may participate in the formulation of the legislation, but only if the principal purpose of the communication is to influence legislation.

"Legislation" includes action (1) by Congress, any state legislature, any local council, or similar legislative body, or (2) by the public in a referendum, ballot initiative, constitutional amendment, or similar procedure. Where a communication refers to and reflects a view on a measure that is the subject of a referendum, ballot initiative or similar procedure, the general public in the State or locality where the vote will take place constitutes the legislative body, and individual members of the general public area, for purposes of this paragraph, "legislators." Accordingly, if such a communication is made to one or more members of the general public in that state or locality, the communication is a direct lobbying communication.

A communication with a legislator or government official will be treated as a direct lobbying communication if, but only if, the communication both:

(A) Refers to specific legislation (see below for a definition of the term "specific legislation"); **and**

(B) Reflects a view on such legislation.

"Specific legislation" includes both legislation that has already been introduced in a legislative body and a specific legislative proposal that the organization either supports or opposes.

In the case of a referendum, ballot initiative, constitutional amendment, or other measure that is placed on the ballot by petitions signed by a required number or percentage of voters, an item becomes "specific legislation" when the petition is first circulated among voters for signature.

Grass Roots Lobbying Communications

A **grass roots lobbying communication** is any attempt to influence any legislation through an attempt to affect the opinions of the general public or any segment thereof. A communication will be treated as a grass roots lobbying communication if, but only if, the communication does all of the following:

(A) Refers to specific legislation (see above for a definition of the term "specific legislation");

(B) Reflects a view on such legislation; **and**

(C) Encourages the recipient of the communication to take action with respect to such legislation.

For purposes of this discussion, "encouraging a recipient to take action with respect to legislation" means that the communication does any of the following:

(A) States that the recipient should contact a legislator or an employee of a legislative body, or should contact any other government official or employee who may participate in the formulation of legislation (but only if the principal purpose of urging contact with the government official or employee is to influence legislation);
(B) States the address, telephone number, or similar information of a legislator or an employee of a legislative body;
(C) Provides a petition, tear-off postcard or similar material for the recipient to communicate with a legislator or an employee of a legislative body, or with any other government official or employee who may participate in the formulation of legislation (but only if the principal purpose of so facilitating contact with the government official or employee is to influence legislation); **or**
(D) Specifically identifies one or more legislators who will vote on the legislation as: opposing the communication's view with respect to the legislation; being undecided with respect to the legislation; being the recipient's representative in the legislature; or being a member of the legislative committee or subcommittee that will consider the legislation.

Examples Regarding Direct Lobbying Communications:

Example 1. Organization P's employee, X, is assigned to approach members of Congress to gain their support for a pending bill. X drafts and P prints a position letter on the bill. P distributes the letter to members of Congress. Additionally, X personally contacts several members of Congress or their staffs to seek support for P's position on the bill. The letter and the personal contacts are direct lobbying communications.

Example 2. Organization M's president writes a letter to the Congresswoman representing the district in which M is headquartered, requesting that the Congresswoman write an

administrative agency regarding proposed regulations recently published by that agency. M's president also requests that the Congresswoman's letter to the agency state the Congresswoman's support of M's application for a particular type of permit granted by the agency. The letter written by M's president is not a direct lobbying communication.

Example 3. Organization Z prepares a paper on a particular state's environmental problems. The paper does not reflect a view on any specific pending legislation or on any specific legislative proposal that Z either supports or opposes. Z's representatives give the paper to a state legislator. Z's paper is not a direct lobbying communication.

Example 4. State X enacts a statute that requires the licensing of all day care providers. Agency B in State X is charged with preparing rules to implement the bill enacted by State X. One week after enactment of the bill, organization C sends a letter to Agency B providing detailed proposed rules that organization C suggests to Agency B as the appropriate standards to follow in implementing the statute on licensing of day care providers. Organization C's letter to Agency B is not a lobbying communication.

Example 5. On the organization's own initiative, representatives of Organization F present written testimony to a Congressional committee. The news media report on the testimony of Organization F, detailing F's opposition to a pending bill. The testimony is a direct lobbying communication but is not a grass roots lobbying communication.

Example 6. Organization R's monthly newsletter contains an editorial column that refers to and reflects a view on specific pending bills. R sends the newsletter to 10,000 nonmember subscribers. Senator Doe is among the subscribers. The editorial column in the newsletter copy sent to Senator Doe is not a direct lobbying communication because the newsletter is sent to Senator Doe in her capacity as a subscriber rather than her capacity as a legislator.

Example 7. Assume the same facts as in Example (6), except that one of Senator Doe's staff members sees Senator Doe's copy of the editorial and writes to R requesting additional information. R responds with a letter that refers to and reflects a view on specific legislation. R's letter is a direct lobbying communication.

Communications that are grass roots lobbying communications.

Example 1. A pamphlet distributed by organization Y states that the "President's plan for a drug-free America," which will establish a drug control program, should be passed. The pamphlet encourages readers to "write or call your senators and representatives and tell them to vote for the President's plan." No legislative proposal formally bears the name "President's plan for a drug-free America," but that and similar terms have been widely used in connection with specific legislation pending in Congress that was initially proposed by the President. Thus, the pamphlet refers to specific legislation, reflects a view on the legislation, and encourages readers to take action with respect to the legislation. The pamphlet is a grass roots lobbying communication.

Example 2. Assume the same facts as in Example (1), except that the pamphlet encourages readers to "write the President to urge him to make the bill a top legislative priority" rather than encouraging readers to communicate with members of Congress. The pamphlet is a grass roots lobbying communication.

Example 3. Organization B, a nonmembership organization, includes in one of three sections of its newsletter an endorsement of two pending bills and opposition to another pending bill and also identifies several legislators as undecided on the three bills. The section of the newsletter devoted to the three pending bills is a grass roots lobbying communication.

Communications that are not grass roots lobbying communications.

Example 1. Organization L places in its newsletter an article that asserts that lack of new capital is hurting State W's economy. The article recommends that State W residents either invest more in local businesses or increase their savings so that funds will be available to others interested in making investments. The article is an attempt to influence opinions with respect to a general problem that might receive legislative attention and is distributed in a manner so as to reach and influence many individuals. However, the article does not refer to specific legislation that is pending in a legislative body, nor does the article refer to a specific legislative proposal the organization either supports or opposes. The article is not a grass roots lobbying communication.

Example 2. Assume the same facts as Example (1), except that the article refers to a bill pending in State W's legislature that is intended to provide tax incentives for private savings. The article praises the pending bill and recommends that it be enacted. However, the article does not encourage readers to take action with respect to the legislation. The article is not a grass roots lobbying communication.

Example 3. Organization B sends a letter to all persons on its mailing list. The letter includes an update on numerous environmental issues with a discussion of general concerns regarding pollution, proposed federal regulations affecting the area, and several pending legislative proposals. The letter endorses two pending bills and opposes another pending bill, but does not name any legislator involved (other than the sponsor of one bill, for purposes of identifying the bill), nor does it otherwise encourage the reader to take action with respect to the legislation. The letter is not a grass roots lobbying communication.

Example 4. A pamphlet distributed by organization Z discusses the dangers of drugs and encourages the public to send their legislators a coupon, printed with the statement "I support a drug-free America." The term "drug-free America" is not widely identified with any of the many specific pending legislative proposals regarding drug issues. The pamphlet does not refer to any of the numerous pending legislative proposals, nor does the organization support or oppose a specific legislative proposal. The pamphlet is not a grass roots lobbying communication.

Example 5. A pamphlet distributed by organization B encourages readers to join an organization and "get involved in the fight against drugs." The text states, in the course of a discussion of several current drug issues, that organization B supports a specific bill before Congress that would establish an expanded drug control program. The pamphlet does not encourage readers to communicate with legislators about the bill (such as by including the names of undecided or opposed legislators). The pamphlet is not a grass roots lobbying communication.

Additional examples

Example 1. The newsletter of an organization concerned with drug issues is circulated primarily to individuals who are not members of the organization. A story in the newsletter reports on the prospects for passage of a specifically identified bill, stating that the organization supports the bill. The newsletter story identifies certain legislators as undecided, but does not state that readers should contact the undecided legislators. The story does not provide a full and fair exposition sufficient to qualify as nonpartisan analysis, study or research. The newsletter story is a grass roots lobbying communication.

Example 2. Assume the same facts as in Example (1), except that the newsletter story provides a full and fair exposition sufficient to qualify as nonpartisan analysis, study or research. The newsletter story is not a grass roots lobbying communication because it is within the exception for nonpartisan analysis, study or research (since it does not directly encourage recipients to take action).

Example 3. Assume the same facts as in Example (1), except that the story does not identify any undecided legislators. The story is not a grass roots lobbying communication.

Example 4. X organization places an advertisement that specifically identifies and opposes a bill that X asserts would harm the farm economy. The advertisement of this section and does not directly encourage readers to take action with respect to the bill. However, the advertisement does state that Senator Y favors the legislation. Because the advertisement refers to and reflects a view on specific legislation, and also encourages the readers to take action with respect to the legislation by specifically identifying a legislator who opposes X's views on the legislation, the advertisement is a grass roots lobbying communication.

APPENDIX VI: LEAGUE DUES AND PER MEMBER PAYMENTS

For most local Leagues, Per Member Payments ("PMPs") payable to their regional and state Leagues and the League of Women Voters of the United States ("LWVUS") represent a significant portion of their total annual expenses. Accordingly, several years ago when a number of local Leagues in California applied to the IRS to convert their tax exempt status from §501(c)(4) to §501(c)(3), we had lengthy discussions with the IRS reviewing agents as to whether the local Leagues could qualify for §501(c)(3) status when the amounts they paid/transferred to §501(c)(4) organizations (the PMPs) were such a large portion of their annual expenditures.

After extensive discussion with the IRS agents about how the PMPs are determined and how these funds are utilized by the higher level Leagues, the agents agreed that the PMPs should be classified as qualifying §501(c)(3) exempt purpose expenditures for the local Leagues, and approved the Leagues' §501(c)(3) status. Presumably this conclusion was based in part on the fact that any of the higher level Leagues' expenditures could also qualify as exempt purposes expenditures for a §501(c)(3) League organization if incurred directly. (Although the IRS never raised the issue, this conclusion should also confirm that there should be no restrictions on how the higher level Leagues use their PMP revenues in accordance with their budgets, even though such budgets typically include lobbying expenditures.)

Without much detailed discussion on either side, during the course of the IRS review a consensus evolved that to the extent that the higher level Leagues incur lobbying expenditures, then a proportionate part of the local League's PMPs would be classified as direct lobbying expenses or grass roots communications for purposes of the local League's "substantial part" test under §501(c)(3). At the time of these reviews, we could find no regulatory or other guidance on this issue. However, based on a subsequent IRS ruling, and further research detailed below, it now seems clear that no part of the PMPs should be classified as lobbying expenditures for local Leagues' test under §4911.

An additional issue, which again was never raised by the IRS during their review of the Leagues' applications, is whether any portion of membership dues paid to a §501(c)(3) local League would not be deductible to the members because of their League's PMPs payable to the higher level Leagues. As a general matter all dues and donations to such local Leagues are deductible under §170(a), and there is nothing about the nature of PMPs which would cause an exception to this general rule.

Detailed Discussion of the Issues

All local Leagues pay annual PMPs to their state League and to LWVUS, and some Leagues also pay PMPs to regional Leagues. LWVUS, some regional Leagues and all but three state Leagues have always been §501(c)(4) organizations. The PMPs for each local League are calculated at annually determined dollar rates established for each of these higher level Leagues, multiplied by the number of a League's members in each category (individual, household, lifetime and student) as of January 31st of each year, and the PMPs are payable in quarterly installments over the following July 1 – June 30 fiscal year. Thus, each local League's annual obligation for PMPs are fixed prior to the start of that League's fiscal year, and are not payable out of, or calculated as a percentage of, the actual membership dues revenue received by a local League. The

rate per member is approved as part of the higher level Leagues' budgetary processes, which require the approval of the local Leagues at the higher Leagues' annual meetings, conventions or councils.

PMP revenues for LWVUS and larger state Leagues typically average about 20-25% of their total annual revenues, but may be a higher percentage for smaller state Leagues. Leagues at all levels have other sources of revenue such as donations, grants, honoraria, investment income, etc.

LWVUS, state and regional Leagues basically perform two roles: (a) providing services directly to and for the benefit of the Leagues in their exempt purpose operations; and (b) performing exempt purpose activities in those situations where it is not practical for such activities to be conducted individually by the Leagues (including advocacy and lobbying at the regional, state or national government level).

Characterization of Per Member Payments

PMPs are a form of general funding support for the higher level Leagues, providing part of the financial resources needed to perform their services and activities to/for the local Leagues and to cover their administrative expenses. None of the PMP revenue sources are earmarked for any particular purpose. During the above described application reviews, the IRS agents were provided with lengthy and detailed written discussions of the kinds of support services provided to local Leagues in California by LWVUS and the League of Women Voters of California ("LWVC"). Additional information was provided about the activities which these higher level Leagues perform at their own level of government on behalf of the local Leagues because it would not be practical for local Leagues to undertake such activities individually. (Other state Leagues and regional Leagues provide varying levels of similar services and activities, depending on their size and financial resources.)

These services are directly valuable to Leagues in performing their exempt purpose operations, which is precisely why the Leagues provide support through their PMPs—so that they can benefit from these services. Equally important is the fact that the local Leagues can realize significant cost savings from such services. In California, it is not unusual that a League's cost savings in these areas actually offset the total cost of that League's PMPs.

Control Over Exempt Purpose Expenditures

Given that the higher level Leagues are §501(c)(4) organizations, the IRS reviewing agents were also concerned as to how the local Leagues could be assured that the higher level Leagues would continue to expend the PMP funds in the manner set forth in their budgets. We noted that the local Leagues have the right to elect all of the officers and directors of these higher level Leagues, and to approve their annual budgets which control the way that the higher level Leagues determine their expenditures. Thus it is clear that because of these voting rights the local Leagues exercise an ongoing element of "control" over the operating plans which determine the expenditures of the higher level Leagues.

In light of what we described above, the IRS agents were satisfied that the local Leagues could be assured that the PMP funds would continue to be used in the manner described.

Tax Treatment of Per Member Payments

Subsequent to the time of the IRS review process, in mid-2011, the IRS issued a private letter ruling that is relevant to the tax treatment of PMPs for local Leagues. Specifically, it was a private letter ruling obtained by an §501(c)(3) organization, Alliance for Justice, described on their website: http://bolderadvocacy.org/blog/irs-provides-needed-guidance-on-grants-from-public-charities-to-other-public-charities-irs-provides-needed-guidance-on-grants-from-public-charities-to-other-public-charities.

The key issue in the request for ruling was the private foundation regulations which address how to determine a private foundation's lobbying expenditures in calculating the amount subject to the excise tax imposed by §4945. In this private letter ruling the IRS concluded that it is appropriate to extend the conceptual framework set forth in regulations under §4945 covering the characterization of grants made by private foundations to similar types of grants made by public charities (there are no similar regulations specifically about public charity grants). The following language is from the Alliance for Justice's private letter ruling:

> Under section 53.4945-2(a)(6)(i) of the regulations, general support grants by private foundations to public charities are not treated as expenditures for lobbying...so long as the grant is not earmarked for lobbying. No comparable provision expressly addresses the treatment of a grant from one public charity to another public charity. However, the standard for public charities should be no more stringent than that which applies to private foundations, as such an approach is consistent with the extensive legislative history and Code provisions that indicate a Congressional intent to encourage grantmaking and advocacy by public charities while penalizing private foundations that earmark grants to support lobbying.
>
> Consequently, general support grants from you *[the Alliance for Justice]* to another public charity may be treated as non-lobbying expenditures so long as they are not earmarked for lobbying, even if some or all of the funds are ultimately expended by the recipient charity for lobbying....
>
> For the reasons stated previously, the standard for public charities should be no more stringent than that which applies to private foundations. Therefore, as a public charity, your grants restricted for use within a specific project of a grantee public charity will not, solely by virtue of that restriction, be considered earmarked for lobbying. Your grants to a public charity for a specific program will not be considered earmarked for lobbying so long as the grant, combined with all other grants by you for that program during the year, do not exceed the amounts budgeted for non-lobbying activities. If your grants do exceed the amount budgeted for non-lobbying activities, the amount in excess of the non-lobbying activities will be considered a lobbying expenditure.

An IRS private letter ruling can only be relied upon by the person or entity to which it is addressed. However, it is certainly possible to follow the IRS technical analysis in such a ruling and see if it is also appropriate in another situation. In this ruling the IRS concluded that it was appropriate to adopt the conceptual framework of specific private foundation regulations and apply them to a public charity in a situation outside of §4945. Therefore, it would not be inconsistent to

use this same regulation's analytical approach to public charities in similar tax situations without relying specifically on that letter ruling.

If the higher level Leagues are exempt under §501(c)(3), as three state Leagues and several regional League already are, then PMPs transferring from a §501(c)(3) local League to a §501(c)(3) regional or state League would exactly mirror the fact situation of the letter ruling. Because there is no earmarking of PMPs, and a local League's PMPs would not feasibly exceed the non-lobbying expenditures of any higher level League, then its PMPs would not have to be characterized as lobbying expenditures to the local League.

On the surface, it would seem logical that the same conceptual approach should also be applicable to PMPs paid by §501(c)(3) local Leagues to higher level Leagues which are exempt under §501(c)(4), because the operations of the higher level Leagues are essentially the same under either tax status, and their relationship to the local Leagues is exactly the same. However, the IRS in some instances does require different tax treatment for recipient organizations which are not §501(c)(3).

For example, Regs. §56.4941-3(c)(i)(3) addresses transfers by a §501(c)(3) organization to a non-charity which incurs lobbying expenditures. (Here a non-charity is any entity which is not a §501(c)(3) organization.) As a general rule, this regulation requires that such transfers have to be characterized first as lobbying expenditures of the transferor, to the extent of the transferee's lobbying expenditures, and only as non-lobbying expenditures to the extent that the transfer exceeds the amount of the transferee's lobbying expenditures. However, this regulation does not apply if the transferor receives full value from the transferee in exchange for the amount transferred. For example, it states "…this paragraph does not apply to an electing public charity's fair market value payment of rent to a landlord."

As described in the initial part of this discussion, it is clear that local Leagues receive full value for their PMPs as a result of the services rendered by the higher level Leagues to and on behalf of local Leagues. Accordingly, their PMPs would not be subject to the characterization established by the above regulation. (This conclusion is consistent with the conclusions of the IRS reviewing agents regarding the eligibility of PMPs as exempt expenditures, as noted above.) It would appear that the PMPs should be characterized in the manner described in the above private letter ruling, i.e., as lobbying expenditures only to the extent that the amount of the transfer exceeded the amount of the transferee's non-lobbing expenditures.

As discussed earlier, PMP revenue are not earmarked for lobbying expenditures in the higher League budgets; rather they are general support funding. Following the above analysis, local League PMPs therefore should not be characterized as lobbying expenditures unless these payments are in excess of the recipient higher level League's non-lobbying expenditures. On a per-League basis or even collectively, PMP revenues payable to any higher level League would never exceed the non-lobbying expenditures of any recipient League, since these normally are in excess of 90% of a League's total expenditures.

Deductibility of Membership Dues

In the situation of local Leagues qualified as exempt under §501(c)(3), the general rule would be that League membership dues would be fully deductible under §170(a) in the absence of

any specific statutory or regulatory exceptions. For example, the dues would not be deductible (a) to the extent that the member has received a benefit because of the contribution; or (b) to the extent that the contribution has been specifically "earmarked" by a donor or member to fund a lobbying expenditure of the League, and the amount has been so used by that League. Neither of those exceptions are normally applicable in the situation of Leagues.

As discussed earlier, membership dues are not earmarked for any specific expenditure; they are just part of the overall funding of League activities. Therefore, it is clear that membership dues should be fully deductible for any member who itemizes deductions for tax return purposes.

APPENDIX VII: IMPACT ON GROUP EXEMPTION FROM CONVERSION TO §501(c)(3)

Certain state Leagues in the past have applied for a group exemption under §501(c)(4) for all of the local Leagues in their state. Pursuant to the rules governing group exemptions, each state League must submit an annual report to the IRS describing the addition of any new local Leagues in their state (excluding Education Funds, which are exempt under §501(c)(3)) to the group, and the removal of any local League which has changed tax status or gone out of existence.

Some state Leagues are contemplating the consolidation of the assets and operations of their League entity into their Education Fund, which is tax exempt under §501(c)(3). As part of that consolidation, the League organization may remain in existence for some period of time after such a consolidation. Similarly, a number of the local Leagues in the same states are considering conversion to §501(c)(3) tax status.

The question arises as to the potential impact on the existence of the group exemption from the consolidation of the state League entities or the conversions by local Leagues.

1. The initial requirements[i] for obtaining a group exemption include the following:

   a) The "central organization" (i.e., the state League entity) must be an exempt organization.
   b) The central organization must have subordinates (i.e., its local Leagues) which are affiliated with it and subject to its general supervision or control.
   c) The application must be for a common tax status for all subordinate members (in this case, §501(c)(4)).
   d) Each subordinate must authorize the central organization to include it in the group exemption application, or later in the group exemption itself.

2. Continued effectiveness of a group exemption letter is based on the following conditions[ii]:

   a) Continued existence of the central organization, and its continued qualification under §501(c).
   b) Annual filings by the central organization as to changes to the group, together with its own annual information returns (e.g., Form 990 or 990-EZ).

3. Continued effectiveness of a group exemption as to a particular subordinate is based on the following conditions[iii]:

   a) Conformity of the subordinate with all of its original qualifying conditions.
   b) Filing of any necessary annual information returns by the subordinate.

4. A group exemption letter shall cease to have effect either as to a particular subordinate or to the group as a whole when a central organization notifies the IRS that[iv]:

   a) It is going out of existence, or

b) The subordinate no longer fulfills all of the original qualifying conditions. For example, the subordinate may have ceased to exist, changed its tax status to be different from the group's status, disaffiliated from the central organization, or withdrawn their authorization to the central organization.

For subordinate organizations which are covered by a group exemption and which file e-Postcards (Form 990-N), the IRS shows the name of the central organization as the "legal" name of each subordinate organization, and their actual legal name as a "doing business as" name.

Impact of a Local League Converting to §501(c)(3)

If one or more local League decide to convert to tax exempt status under §501(c)(3) by filing a Form 1023-EZ application with the IRS, they should concurrently contact their state League and withdraw their authorizations to be included in the group exemption. Following item 4(b) above, the group exemption would immediately cease to have effect as to such Leagues, but would continue to have effect as to the other Leagues which have not withdrawn their authorization and remain qualified under §501(c)(4). The effective date of the conversion to §501(c)(3) status is the date when the particular League files its Form 1023-EZ application online, so there would be no gap between a League's group exemption status under §501(c)(4) and its new separate exempt status under §501(c)(3).

If a League does convert to §501(c)(3) it should contact the IRS Exempt Organization Help Line, (877) 829-5500, and ask to have a "data sheet" set up in the IRS system, and then its subsequent e-Postcard filing will reflect its actual legal name.

A dual-entity local League may be in a different situation because of its dual structure with its Education Fund. If the local League were to convert to §501(c)(3) status by consolidating its assets and operations into its Education Fund, and if the local League entity itself continues in existence even if inactive, then it would remain covered by the group exemption.

Impact of Consolidation of the state League Entity into its Education Fund

As noted above, the existence of the group exemption will continue in effect only as long as a state League entity (a) continues in existence and (b) continues to function as the "central organization."

In order to function as the central organization, the subordinate organizations covered by the group exemption must remain "affiliated" with the central organization and remain subject to its "general supervision or control."[v] There is no explanation at all within IRS literature as to what each of these terms exactly means; however, the fact that a League group exemption has been in existence seems clear proof that the normal relationship between state Leagues and local Leagues qualifies.

Under the contemplated consolidation, afterwards the state League entity could possibly retain in its Bylaws certain "supervisory or control" powers over local Leagues, such as the existing provisions which cover the recognition or dissolution of local Leagues. On the other hand, the state

League entity would no longer have any members after the consolidation and so it is likely that this lack of membership could be interpreted to mean that it was no longer "affiliated" with the local Leagues and therefore would not be qualified as a central organization.

If the group exemption ceases to have effect as to the entire group, then it would be necessary to ensure that each of the local Leagues which are not intending to convert to §501(c)(3) status can remain exempt under §501(c)(4) on an individual basis. This should almost certainly not be an issue, as these Leagues have qualified for that status within the group exemption, and the great majority of Leagues across the country have always qualified under that Code section. However, these local Leagues will have to contact the IRS Exempt Organization Help Line, (877) 829-5500, and ask to have a "data sheet" set up in the IRS system. They must have articles of incorporation and/or bylaws, with appropriate language for a §501(c)(4) organization. But they will not actually have to provide copies of such documentation at the time of making this call.

---

[i] Rev. Proc. 80-27, 1980-1 C.B. 677, Section 4.
[ii] Ibid., Section 7.01.
[iii] Ibid., Section 7.02.
[iv] Ibid., Section 7.03
[v] Ibid., Section 4; Publication 557, Pages 8-10; and Publication 4573.