



# The Cincinnatus Association

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## --- MEMORANDUM ---

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**Date:** 12/22/2010  
**To:** Cincinnatus Members  
**From:** Roger Smith  
**Subject:** 501c(3) Analysis

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The Executive Committee has approved the creation of *Cincinnatus Community Fund, Inc.*, a 501c(3) charitable organization attached to the existing Cincinnatus Association, which is already established as a 501c(4) social welfare organization. This is estimated to cost \$4,000, but will ultimately enable the organization and its members to benefit from the increased availability of funds and the donor tax-deductibility of significant portions of dues and donations.

### ➤ BACKGROUND

Cincinnatus was established in 1920 as a voluntary member association. From a financial perspective, virtually all expenditures of the association related to providing benefits to its members (dinners, handbooks, mailings). While societal benefit was the Association's primary focus, it achieved this through volunteers' initiative and action. The Association spent little, if any, money specifically for this ultimate organizational purpose.

The Association appears to have operated without formal legal status until 1996, when it was appropriately granted a non-profit, tax exempt status under Internal Revenue Code section 501c(4) – a social welfare organization which, while tax-exempt for itself, does not permit the charitable deduction of payments made to it.

Since 1996, the organization has increasingly used its funds to provide charitable benefits to non-members or society in general (awards, grants, contributions), or to directly support its charitable purposes (administrator functions, website, printing that support panel work and direct charitable disbursement). During its 2010-2011 fiscal year, the Association expects to spend roughly 40% (\$15,000) of its member dues to provide or support its charitable benefits. The Association has, in the past, also encountered several situations where donor funds were either not available, or were significantly constrained, because we had no 501c(3) designation.

### ➤ OPERATIONAL STRUCTURE

*Cincinnatus Community Fund, Inc.* will be an Ohio non-profit corporation with a single member (owner), Cincinnatus Association. Once established, it will obtain IRS 501c(3) status, and register with Ohio as a public charity with a stated purpose:

*Cincinnatus Community Fund, Inc. is organized, and at all times shall be operated, exclusively to promote and provide financial and other resources and support for projects and efforts that seek to improve the quality of life for all citizens in the Greater Cincinnati region through, among other things, the study of critical issues confronting the region, the engagement of community leaders and the nonpartisan shaping of public policy.*

Cincinnatus Community Fund, Inc. will be managed by a separate board of five trustees, appointed to rolling two-year terms by Cincinnatus Association. Officers are President, Vice President, Secretary, Treasurer and Compliance Officer, supported by an Executive Director.

Creation of this entity requires four primary steps:

1. **Definition** – Creation of Articles of Incorporation and Constitution which define the organization’s purpose, structure and operation, and a 3-year financial projection.
2. **Legal Entity** – Creation of an Ohio legal entity:
  - a. Ohio Secretary of State - Domestic Nonprofit Corporation; \$125 fee
  - b. IRS Form SS-4 – Application for Employer Identification Number
3. **Federal Tax Exemption** – Filing of IRS Form 1023 (\$850 filing fee)
4. **Ohio Registration** – Ohio Attorney General Charitable Trust Registration

### ➤ **BENEFITS**

Establishment of a 501c(3) entity would enable two significant benefits:

- **Tax Deductions** - Funds given to Cincinnatus Community Fund, Inc. can be deducted as charitable contributions. Only the portion applicable to charitable activities is deductible – such as 40% of dues (currently this would amount to \$130 for Active members) or 100% of direct, specific contributions. This would be determined in advance and noted on Member Dues bills and other documentation.
- **Fund Sources** - Many foundations and donors restrict their giving to only 501c(3) organizations. These sources would become available to us. Also, in concept, many individuals and organizations would more readily give to a 501c(3) than to a 501c(4).

### ➤ **RISKS & LIMITATIONS**

Once obtained, a 501c(3) organization’s tax exempt status will be at risk if it becomes involved in lobbying or political campaigns, or fails to maintain proper recordkeeping and reporting. A 501c(3) organization must vehemently monitor and control the following critical requirements:

- Must avoid any involvement in **political campaigns** for elective public office <sup>(1)</sup>.
- Must restrict **lobbying** activities to an insubstantial part of its total activities <sup>(2)</sup>.
- Must ensure that its earnings, operations and assets do not inure to any private interest.
- Must file all necessary reports, returns, registrations and other filings.
- Must not undertake activities that are beyond its authorized purposes.

#### **Cincinnatus Association – 501c(3) and PAC**

Given the nature of Cincinnatus Association and its interests in issues of public policy, its involvement in lobbying and political campaigns would seem inevitable. However, a 501c(3) organization is severely limited in its ability to lobby and be involved in political campaigns – creating what would appear to be inherent conflict and inevitable violations. This is not necessarily so, particularly if any lobbying and campaign involvement were conducted through a Cincinnatus PAC established as a separate subsidiary organization of Cincinnatus Association. Careful management and oversight by Cincinnatus Association would allow both the 501c(3) and the PAC to operate effectively and without violation.

### ➤ **COSTS**

Two law firms (Dinsmore, Taft) gave us a generalized quote of \$3,000-\$5,000, plus approx. \$1,000 in filing fees, for the creation and tax-exemption process for a small, simple non-profit entity. Roger Smith (Executive Administrator, CPA) has indicated that he could do this for less, at \$75/hour. These prices all assume reasonable and timely support, and the provision of necessary decisions and information.

Once the organization is established, the costs of on-going activity would include:

- **Executive Director** – For purposes of maintaining an entity clearly separate from Cincinnati Association, a paid Executive Director should be hired. This could be an employee or an independent contractor, with cost dependent on the magnitude and complexity of the organization and the responsibilities delegated by the Board.
- **Form 990** - With annual income under \$50,000, only a Form 990N “postcard” would be required (virtually no cost).
- **OH Registration** – With annual income under \$25,000, there would be no fee. Annual income up to \$50,000 would incur a \$50 annual fee.
- **Audit / Oversight** – There are no IRS or state requirements for paid or independent audit or oversight. Given the entity’s small size and simple nature, adequate oversight from within the Association structure is possible without cost, although some may desire an independent review. Some foundations and larger donors may also want an independent review. Given the cost of an audit, and the small size of the organization, discussion with a donor can often find less costly alternatives that are acceptable to the donor.

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<sup>(1)</sup> **Political Campaign Restrictions** - Under the Internal Revenue Code, all section 501c(3) organizations are absolutely prohibited from directly or indirectly participating in, or intervening in, any political campaign on behalf of (or in opposition to) any candidate for elective public office. Contributions to political campaign funds or public statements of position (verbal or written) made on behalf of the organization in favor of or in opposition to any candidate for public office clearly violate the prohibition against political campaign activity. Violating this prohibition may result in denial or revocation of tax-exempt status and the imposition of certain excise taxes.

However, certain activities or expenditures may not be prohibited, depending on the facts and circumstances. For example, certain voter education activities (including presenting public forums and publishing voter education guides) conducted in a non-partisan manner do not constitute prohibited political campaign activity. In addition, other activities intended to encourage people to participate in the electoral process, such as voter registration and get-out-the-vote drives, would not be prohibited political campaign activity if conducted in a non-partisan manner.

On the other hand, voter education or registration activities with evidence of bias that (a) would favor one candidate over another; (b) oppose a candidate in some manner; or (c) have the effect of favoring a candidate or group of candidates, will constitute prohibited participation or intervention.

<sup>(2)</sup> **Lobbying Restrictions** - Lobbying is any attempt to influence legislation. A 501c(3) organization may engage in some lobbying, but too much lobbying activity risks loss of tax-exempt status. “*Legislation*” includes action by Congress, any state legislature, any local council, or similar governing body, with respect to acts, bills, resolutions or similar items (such as legislative confirmation of appointive office), or by the public in referendum, ballot initiative, constitutional amendment or similar procedure. It does not include actions by executive, judicial or administrative bodies.

An organization will be regarded as attempting to influence legislation if it contacts (direct lobbying), or urges the public to contact (grassroots lobbying), any member or employee of a legislative body for the purpose of proposing, supporting or opposing legislation, or if the organization advocates the adoption or rejection of legislation.

The term “attempting to influence legislation” does not include the following activities:

- Conducting nonpartisan educational meetings.
- Preparing and/or distributing nonpartisan educational materials.
- Making available the results of nonpartisan analysis, study or research.
- Examining and discussing broad social, economic and similar problems.
- Providing technical advice or assistance to a governmental body in response to a written request by that body.