



Advocating during Election Season: Some Dos and Don'ts

All 501(c)(3) organizations can engage in advocacy generally – organizing communities, educating the public on your issues, and fighting for the rights of your communities. There are only two restrictions under federal tax law: lobbying is limited to a certain amount each year, and partisan electoral activity is prohibited entirely. If an activity is not lobbying and does not support or oppose a candidate for public office, chances are you can engage in that activity without any limits.

As you plan your activities for this fall, keep in mind that it's election season. Although 501(c)(3) organizations can certainly engage in nonpartisan voter education and outreach, they must be careful to avoid activities that appear to support or oppose candidate or parties. The IRS prohibits what it calls "campaign intervention."

This means that a 501(c)(3) should not endorse a candidate or tell people which candidates they prefer. It also means that a 501(c)(3) organization should not structure its activities in such a way that is designed to make a candidate look good or bad. A 501(c)(3) organization must be nonpartisan—it cannot help or hurt the chances for election of any particular candidate or group of candidates, regardless of political party affiliation. For instance, a 501(c)(3) could not campaign to get specific women or Latinos elected, even if they do not care whether the candidates are Republican, Democrat, or even if the election is non-partisan (no party affiliation).

A 501(c)(3)'s role during an election is educational, and to encourage civic participation. Although there is a lot you can do around and election, you need to stop short of telling people how to vote or for whom to vote.

This document provides some general guidelines to follow and answers some common questions. It does not provide legal advice and is not meant as a comprehensive look at all election-related activities.

If you have a specific question, you are welcome to contact Alliance for Justice for free technical assistance at advocacy@afj.org or 866-675-6229 (866-NP LOBBY).

Q: During the August recess, we are thinking about a range of activities that include in-district meetings with Member of Congress and State Legislators, drop-in visits, actions at in-district offices, and actions at town hall meetings. Given this spectrum of activities, how do we ensure that our issue advocacy does not cross over into prohibited campaign intervention?

A: "Issue advocacy" here refers to an organization communicating its views on issues of social or economic concern that are related to the organization's charitable purposes. Advocacy might include educating or attempting to influence the public on the need for immigration reform. It could include persuading an elected official to take a specific action, like voting for or against proposed legislation (direct lobbying), or encouraging the public to ask elected officials to do so

(grassroots lobbying).^{*} 501(c)(3) organizations often use the occasion of an election to get greater exposure for the issues they work on.

501(c)(3) organizations can and should engage in issue advocacy—even when election campaigns are occurring. However, issue advocacy crosses the line into prohibited campaign intervention when a communication not only addresses an issue but also tries to tell the audience how to vote on a specific candidate or group of candidates. When discussing issues, organizations should avoid comparing their own views with those of candidates, or mentioning where candidates stand on the issues important to the organization. IRS guidance makes clear that campaign intervention can occur even if the name of a candidate or political party is not mentioned. A 501(c)(3) should be especially careful when the issue it is speaking about is generally considered to be a high-profile issue on which the candidates in a specific election have diverging views and the issue has been used—either by the candidates, the media, or others—to highlight differences between the candidates. Healthcare and immigration reform, among others will likely be high profile campaign issues in many elections this fall, so 501(c)(3)s should be aware of how they talk about the issue in the electoral context, and take care not to compare the candidates' views on these issues.

In connection with advocating on your issues, a 501(c)(3) may be happy or disappointed by a public statement, legislative vote, executive decision or other action of an elected public official. A 501(c)(3) may want to publicize its views by criticizing or praising an elected public official for her actions, regardless of whether or not the official is also a candidate in an upcoming election. It is important that a 501(c)(3)'s commentary not cross the line into prohibited campaign intervention. If a 501(c)(3) has a record of criticizing sitting office-holders, lobbying them and working to hold them accountable, it may continue those activities during an election year. However, close to an election, the IRS may view positive or negative comments about someone running for reelection as "intervention" in the campaign. A 501(c)(3) organization's track record of activity in non-election years is its best protection. For instance, if a group has been pressuring legislators to adopt its views on healthcare reform legislation, and the legislators vote against those recommendations, the group may keep on lobbying and calling public attention to how the officials voted, even during the election campaign, and even if the legislators are also candidates. But if the 501(c)(3) increases its level of criticism or devotes special attention to an legislator's bad (or good) record, it may be found to have done so in order to intervene in an election in a prohibited partisan way. It is important to distinguish between a person's role as legislator (or other elected official) and her role as a candidate.

Q: Which of our planned activities will count as lobbying?

A: All 501(c)(3) public charities are legally permitted to lobby, which involves trying to influence the passage of a law. Lobbying occurs when you are giving your viewpoint to legislators on pending or proposed legislation, or urging the public to do so.

- When you meet with a state legislator or staffer to ask her to support specific legislative priorities, that is lobbying.
- When you send an email out to your lists urging recipients to tell their Members of Congress or state legislators to support a specific legislative proposal, that is lobbying.

It is perfectly legal, but you should stay within your organization's annual limits. Not all meetings with legislators or discussions about specific legislation will count as lobbying, though. It depends on what you are saying and to whom you are speaking.

- When you meet with a legislator or staffer to introduce yourself and educate the legislator about your community, but you do not express a view about any legislation, that is NOT lobbying.
- When you educate the public about the consequences of proposed legislation, but do not urge the public to contact their legislators about it, that is NOT lobbying.*

Q: How can a 501(c)(3) organization safely work with 501(c)(4) organizations or labor unions during election season?

A: A 501(c)(3) organization may work in coalitions and partnership with other organizations, including 501(c)(4) organizations and labor unions, as long as the joint activity is nonpartisan. However, a 501(c)(3) may not do anything indirectly through participation with other groups that it may not do on its own.

A 501(c)(3) may engage in voter education and registration with a 501(c)(4) or union so long as the activities are conducted in a strictly nonpartisan manner. All of the group's joint written materials and oral communications must be nonpartisan. No partisan literature or communications may be distributed by any of the participating groups as part of the joint activity. In addition, the areas selected for conducting the activities must be determined using nonpartisan criteria. While participating 501(c)(4)s and unions may continue to engage in their own partisan activities, these must remain completely separate from their nonpartisan activities conducted jointly with a 501(c)(3).

A 501(c)(3) may not freely share the voter registration lists or other data it collects during these activities with partisan organizations, because this data was collected with 501(c)(3) resources. A 501(c)(3) may accept lists from 501(c)(4)s or unions to conduct its nonpartisan activities. There may not be, however, a requirement or understanding that the 501(c)(3) will use that information to further the partisan activities of the 501(c)(4) or union.

Q: Can we invite a legislator who is running for re-election to one of our events?

A: A 501(c)(3) may sponsor an appearance by a candidate or public official in some instances, but should proceed cautiously. The IRS will look at "all the facts and circumstances" to determine whether the organization is supporting or opposing a candidate. The initial question is whether the 501(c)(3) invited the person as a candidate or in some other capacity.

If the candidate were invited to appear as a candidate, the 501(c)(3) must take steps to ensure that it indicates no support of or opposition to the candidate at the event. No candidate or partisan fundraising should occur at the event, and all opposing candidates should be given an equal opportunity to participate, at either the same event or a comparable one. The IRS does not require that the opportunity be accepted by any of the other candidates, but the group should issue them a specific invitation to the same or comparable event. The IRS will evaluate whether an event was "comparable" based on all the facts and circumstances, including its time and place, expected audience, and attractiveness of venue. Note that federal election law may prohibit such an invitation in the case of federal candidates.

If the group invited the person in a capacity other than as a candidate, it does not have to invite the opposition, but it should document the reason for the invitation other than his or her candidacy and do everything it can to make sure that the event does not turn into a campaign appearance. This includes strictly avoiding any mention of the guest's candidacy or the election in connection with the event. The group also should resist working with the candidate's campaign staff on organizing the event because the campaign's job is to turn the event into a campaigning opportunity for its candidate. It is a good idea to send a letter to the speaker, telling her of the organization's inability to support or oppose candidates and the need to keep the event nonpartisan, and asking her not to mention her candidacy. The organization also should include a nonpartisan disclaimer on written materials and announce it during the event. If, despite the 501(c)(3)'s best efforts, the candidate does something unexpected to promote her election, or if the press interprets the event as a partisan one, then the IRS would likely not consider this to be the group's fault. If, however, an invited candidate promotes an event as a candidate campaign event, the charity should consider cancelling the event.

* This definition applies to 501(c)(3) organizations that have made the 501(h) election to measure their lobbying. For more information about the definition of lobbying, contact Alliance for Justice

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