



The Do's and Don'ts of Electoral Advocacy for 501(c)(3)s

Use this Guide to understand what your organization can and cannot do when conducting nonpartisan electoral advocacy and ballot initiative activities. This information refers to federal laws; be sure to check with your state for additional relevant rules and restrictions.

Use this Guide to Answer Questions About:

- Understanding Electoral Advocacy and Lobbying 2
- 501(c)(3) Advocacy Activities 3
- Ballot Measures and Initiatives 4
- Honoring Public Officials 5
- Interacting with Candidates 5
- Interacting with Legislators 5
- Position Statements 6
- Posting Information on Your Website 6
- Staff Participation 6
- Voter Education 7
- Working with Coalitions 7
- Comparing 501(c)(3) and 501(c)(4) Organizations 7

www.advocacyandcommunication.org

For more information about ACS, please contact us at info@advocacyandcommunication.org. Follow us on [LinkedIn](#).

○
 Cleveland
 1277 West 104th St.
 Cleveland, OH 44102

●
 Columbus
 2612 Zollinger Road
 Columbus, OH 43221

○
 Washington, DC
 300 New Jersey Avenue, NW
 Suite 900, PMB 9005
 Washington, DC 20001

●
 Phoenix
 207 North Gilbert Road
 Suite 007
 Phoenix, AZ 85234

Understanding Electoral Advocacy and Lobbying

1

What is the difference between nonpartisan electoral advocacy and lobbying?

Advocacy is the umbrella term and involves identifying, embracing, and promoting a cause. **Nonpartisan electoral advocacy** is performing advocacy efforts during an election year that do not support or oppose a specific candidate or party.

Lobbying is advocacy that is intended to influence legislation. Only some methods of advocacy are considered lobbying. Although the terms are often used interchangeably, you must make record and report your lobbying activities as defined by the Internal Revenue Service (IRS). For more about lobbying rules, visit advocacyandcommunication.org/tools-resources/.

2

What is the difference between directly lobbying and grassroots lobbying?

Direct lobbying is when an organization attempts to influence specific legislation by stating its position to a legislator (or other government employee who participates in the formulation of legislation) through its staff or members. For example, meeting with a state senator's legislative aide to state a position about a bill that has been introduced in the state senate is a form of direct lobbying.

Grassroots lobbying is when an organization urges the general public to take action on specific legislation. Key elements of grassroots lobbying include:

- ▶ Referring to specific legislation;
- ▶ Reflecting or stating a point of view on the legislation's merits; and
- ▶ Encouraging the general public to contact legislators.

Depending on the type of reporting of lobbying expenses your organization has selected, you may need to separately report direct lobbying activities and grassroots lobbying activities. At the federal level, no more than 25% of lobbying expenses can be for grassroots lobbying activities. For more about lobbying rules, visit advocacyandcommunication.org/tools-resources/.



501(c)(3) Advocacy Activities

3

As a 501(c)(3), what are the things my organization can and cannot do during an election?

Do's	Don'ts
Nonpartisan Election Activities	Partisan Election Activities
<p>Voter Education</p> <ul style="list-style-type: none"> ✓ Help new voters understand elections and the voting process ✓ Sponsor nonpartisan candidate forums or debates subject to limits on lobbying ✓ Distribute nonpartisan questionnaires to candidates ✓ Distribute nonpartisan materials on ballot measures ✓ Distribute nonpartisan materials regarding all candidates or regarding election process ✓ Attend town halls or other forums to raise awareness about the importance of your issue <p>Candidate Engagement</p> <ul style="list-style-type: none"> ✓ Provide briefings to all candidates on the organization's issues <p>Lobbying</p> <ul style="list-style-type: none"> ✓ Direct lobbying activities ✓ Grassroots lobbying activities 	<p>Show Favoritism</p> <ul style="list-style-type: none"> ✗ Endorse/oppose a candidate ✗ Rate candidates on their support of an issue (through a report card, rating card, etc.) ✗ Publicize which candidates share the nonprofit's views ✗ Make positive or negative comments about a candidate or issue at events or in publications (e.g., board meeting, newsletter) ✗ Ask a candidate to pledge support for a cause ✗ Compare and contrast candidate's positions to your organization's views
<p>Broad Voter Participation</p> <ul style="list-style-type: none"> ✓ Encourage and help people get to the polls on Election Day ✓ Register people to vote 	<p>Voter Preference</p> <ul style="list-style-type: none"> ✗ Targeting/registering voters for only one party
<p>Can Spend Resources</p> <ul style="list-style-type: none"> ✓ Activities that do not support a single party or issue ✓ Voter registration ✓ Voter education ✓ Get Out the Vote 	<p>No Nonprofit Resources</p> <ul style="list-style-type: none"> ✗ Contribute or spend money to endorse/oppose a candidate ✗ Raise money for a candidate ✗ Let candidates use office space, equipment, mailing lists, etc.
<ul style="list-style-type: none"> ✓ Direct lobbying (within the limits of the IRS, state, and local laws) ✓ Ballot initiatives ✓ Grassroots lobbying 	

Ballot Measures and Initiatives

4

Can my 501(c)(3) support or oppose a specific ballot measure?

Yes. Efforts to influence the outcomes of referenda, initiatives, and other ballot measures are not considered to be political campaign activity and therefore are permissible for tax-exempt organizations. 501(c)(3) organizations may join and provide financial support to coalitions that are supporting or opposing ballot measures, may distribute literature supporting or opposing ballot measures, and may take people to the polls or provide other assistance to people who want to vote on the ballot measure. Expenditures to influence ballot measures are, however, treated as direct (not grassroots) lobbying activities by the IRS and therefore are subject to the group's lobbying limits on direct lobbying.

5

What are the rules my 501(c)(3) must follow when working on a ballot measure?

The IRS considers activity on ballot measures a lobbying activity. A 501(c)(3) may work for or against ballot questions up to normal lobbying limits. The IRS makes this distinction because advocacy on ballot measures is an attempt to influence a proposed law or a policy—not the election or defeat of a candidate. 501(c)(3)s may also engage in unlimited activities that neither support nor oppose the ballot measure, such as voter registration, voter education, and Get Out the Vote activities. Your state may have reporting requirements for ballot measure expenditures, so check with your state's campaign finance office or an attorney.

6

What are the 501(c)(3) lobbying limits in regards to ballot measures?

The IRS allows 501(c)(3) organizations to choose to measure their lobbying using one of two options, or "tests": the 501(h) expenditure test or the substantial part test. Your lobbying limits depend on which test you select.

If your nonprofit has chosen to measure its lobbying under the 501(h) expenditure test, it has clearer guidance and you can do more lobbying. You can spend a certain percentage of your annual budget (as much as 20% for small organizations, less for larger groups) on efforts by you or your members to directly influence the outcome of a ballot question or legislative vote.

If your organization has chosen to use the substantial part test, it may spend an "insubstantial" amount of money and time on lobbying. The IRS has provided no absolute guidance on how much lobbying is "substantial." A 1952 federal court decision states that 5% of an organization's "time and effort" was an insubstantial part of its overall activities. Most tax practitioners generally advise that charities can safely devote 3-5% of their overall activities toward lobbying. If a charitable organization does not specifically choose the 501(h) expenditure test, it is automatically subject to the substantial part test. This includes any efforts to support or oppose a ballot question and other efforts the organization makes to influence more traditional legislative proposals at the local, state, or federal levels. For more on these options, visit [irs.gov/charities-non-profits/measuring-lobbying-activity-expenditure-test](https://www.irs.gov/charities-non-profits/measuring-lobbying-activity-expenditure-test).



Honoring Public Officials

7



Can my 501(c)(3) present an award or otherwise honor a public official for his or her past service on behalf of their issue during an election year?

It depends. If the public official has already announced that he or she is running for office, it may be perceived as an endorsement of the candidate. It might be OK if the decision to give the award was made well before the official announced his or her candidacy, or the official is one of several honorees or awardees, some of whom are not candidates. If you decide to honor an official who is running for office, review all press statements and communication materials carefully to ensure no messages will be interpreted as endorsing that person's campaign for election/re-election. (This information refers to federal laws, so be sure to check with your state in case there are additional restrictions.)

Interacting with Candidates

8



Can my 501(c)(3) educate candidates on issues important to my organization?

Yes. Your 501(c)(3) may provide information to educate a candidate on your issues if you make these resources available to all the candidates in a particular race and all candidates receive the same level of support and information.

You can send the candidates a policy paper or research findings, and let them know about your program initiatives. A 501(c)(3) may not provide resources in the form of money or time directly to candidates. Your nonprofit may not provide personalized research or candidate-specific efforts for particular candidates. For example, don't help just one candidate develop a new policy paper on an issue of importance to your organization; it could appear to be a partisan effort to help that candidate get elected.

Interacting with Legislators

9



Can 501(c)(3)s meet with legislators?

Yes. 501(c)(3) staff may continue to meet with legislators throughout an election year to press their legislative agendas at events like legislative breakfasts and town hall meetings. You may continue to invite legislators to visit and observe your programs, address conference/meeting attendees, and attend and speak at fundraising events. This is particularly safe for legislators who are not running for re-election at the time. Incumbent legislators who are up for re-election may also be invited to attend these meetings, as long as the events are not used as campaign events—they cannot solicit votes, ask for volunteers, or collect campaign contributions. Supporters of candidates cannot take these actions on their behalf or carry signs supporting the candidate during the event. As a rule, 501(c)(3)s should not show any favoritism in whom they invite to such events. It is a good idea to invite representatives of both political parties and, if possible, to invite both legislators who are running for office and those who are not. Since many legislators

Continued on next page



may not be aware of the limits when they are meeting with tax-exempt groups, it is a good idea to send them a letter before the meeting, letting them know that the meeting or event cannot be used as a campaign event.

Position Statements

10 —————▶

Can my 501(c)(3) state its position on public policy issues on which candidates for public office are divided?

Yes. An organization may take positions on public policy issues, including issues that divide candidates in an election for public office, if the message does not favor or oppose a candidate. Be aware that the message does not need to identify the candidate by name to be prohibited political activity. A message that shows a picture of a candidate, refers to a candidate's political party affiliation, or includes any other distinctive features of a candidate's platform or biography may be considered prohibited political activity.

Posting Information on Your Website

11 —————▶

Can my 501(c)(3) post information on its website (or link to other websites) about a candidate for public office?

With caution. It is prohibited for your organization to post something on your website that favors or opposes a candidate for public office. If your organization posts a link to another website, you are responsible for the consequences of establishing and maintaining that link, even if you don't have control over the content of the linked site. Because the linked content may change, you should monitor the linked content and adjust or remove any links that could result in prohibited political activity. It is the same as if the organization distributed printed material or made oral statements or broadcasts that favored or opposed a candidate.

Staff Participation

12 —————▶

Can 501(c)(3) staff help on Election Day?

Yes. Nonprofits are well-positioned to help on Election Day if they participate in nonpartisan activities. The civic mission of nonprofits makes them a good fit not only to encourage their communities to vote, but to provide staff to help at the polls. Nonprofits may allow staff time off to vote, allow staff to spend part or all of Election Day doing nonpartisan Get Out the Vote activities, and encourage staff and volunteers to sign up as poll workers or translators.



Can 501(c)(3) staff participate in partisan campaign activities on their own time?

Yes. 501(c)(3) officers, directors, employees, and members are free to engage in partisan activities on their own time as long as they do not use any organizational resources (telephones, email, postage, mailing lists, etc.) in these efforts. A person's "own time" usually includes weekends, holidays, vacations, evenings, and unpaid lunch periods. They cannot distribute campaign literature at events sponsored by a 501(c)(3), but they may place bumper stickers on their cars and wear campaign buttons to these events. When acting as a volunteer for a candidate or a political party, individuals should not identify themselves as members, officers, or employees of the organization or any other tax-exempt organization.

Voter Education**Can my 501(c)(3) educate voters on candidates and ballot measures?**

Yes. The IRS has consistently stated that 501(c)(3) nonprofits carry out nonpartisan voter education on candidates and ballot measures, including creating one-pagers, candidate questionnaires, and samples of an official ballot, and hosting candidate forums, as long as these activities cannot be construed as endorsing or opposing a specific candidate. Check out ACS' *Guide to Developing a Successful Get Out the Vote Program for 501(c)(3)s*.

Working with Coalitions**Can my 501(c)(3) work with coalitions that include unions, political action committees, and other groups that engage in partisan campaign activities?**

Yes, as long as the coalition itself is not engaged in partisan campaign activities. For example, an organization may continue to be part of a statewide coalition that is seeking more funding for a particular issue or that is working to educate an audience about a tax credit even though unions and other partisan groups are part of these efforts. If the coalition gets involved in partisan political activities, your 501(c)(3) should remove its name as a supporter of the coalition for all purposes. Keep in mind that any funds your organization contributes to a coalition cannot be used to support any candidate.

Comparing 501(c)(3) and 501(c)(4) Organizations**Are the rules different for 501(c)(3) and 501(c)(4) organizations?**

Yes. The chart on the next page outlines the different advocacy rules for 501(c)(3) charities compared to 501(c)(4) organizations. To learn more about 501(c)(4) rules and regulations, visit bolderadvocacy.org/wp-content/uploads/2016/12/501c4-Strategy-and-Discussion-Guide.pdf.

Comparison of 501(c)(3) and 501(c)(4) Permissible Activities

(Source: *Bolder Advocacy and Alliance for Justice*, 2014)

Activity	501(c)(3) Public Charity	501(c)(4)
Lobby for/against legislation	Limited	Unlimited
Support/oppose ballot measures	Limited	Unlimited
Conduct public education and training sessions about participation in the political process	✓	✓
Educate candidates on issues within purview of the organization	✓ Must offer information to all candidates	✓
Sponsor a debate between candidates, where all viable candidates are invited and given equal opportunity to speak on a broad range of issues	✓	✓
Distribute voter guides to the public that set out the candidates' views on a broad range of issues	✓	✓
Distribute voter guides to the public that compare candidates on issues of importance to the organization	✗	✓
Rent mailing lists and facilities at fair market value to other organizations, legislators, and candidates	✓ If rented, must allow any candidate to rent	✓ May rent to select candidates only
Conduct nonpartisan Get Out the Vote activities, voter registration, and education drives	✓	✓
Conduct voter registration and Get Out the Vote activities based on party affiliation or how people will vote	✗	✓
Conduct nonpartisan voter protection activities	✓	✓
Establish a 501(c)(4)	✓	✓
Endorse candidates and publicize its endorsements	✗	✓
Fund independent expenditures in support of or opposition to a candidate	✗	✓
Make campaign contributions (monetary or in-kind)	✗	Varies based on state election laws (prohibited for federal candidates)
Establish and pay for the administrative and fundraising costs of a connected political organization (separate segregated fund)	✗	✓
Criticize sitting elected officials	✓ May not attack their personal characteristics or attack them in their status as a candidate	✓
Compare the organization's position on an issue with that of a candidate	✗	✓
Connect the organization's criticism of public official to voting in an election	✗	✓
Highlight the differences between candidates for public office on a high-profile issue on which the candidates have diverging views	✗	✓
Ask candidates to sign pledges on any issue	✗	✓
Post partisan political messages on social media	✗	✓