

Election Checklist for 501(c)(3) Public Charities

Ensuring Election Year Advocacy Efforts Remain Nonpartisan

Federal tax law explicitly prohibits activity by 501(c)(3) organizations that supports or opposes candidates for public office, but it also recognizes the importance of their participation in the democratic process. The law allows charities to engage in a wide variety of nonpartisan election-related activities, including voter registration and education as well as ballot measure campaigns.

The IRS prohibits what it calls “campaign intervention” by 501(c)(3) organizations. A 501(c)(3) organization may not 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 must be educational – and to encourage civic participation. Although there is a lot a 501(c)(3) can do around an election, the organization needs to stop short of directly or indirectly telling people how to vote or for whom to vote.

Permissible Election Activities by 501(c)(3) Public Charities

With certain restrictions, a 501(c)(3) MAY do the following:

- engage in limited lobbying, including work on [ballot measures](#)
- continue to advocate for the organization’s issues during an election year
- educate all of the candidates on public interest issues within the purview of the organization
- [criticize sitting elected officials](#), especially if the organization has a history of doing so
- publish [legislative scorecards](#)
- conduct nonpartisan public education and training sessions about participation in the political process
- prepare candidate [questionnaires and create voter guides](#)
- rent, at fair market value, mailing lists and facilities to other organizations, legislators, and candidates if an on-going activity and not arranged only for a particular candidate or party
- conduct nonpartisan get-out-the-vote and voter registration drives¹
- canvass the public on issues
- sponsor [candidate debates](#)
- work with all political parties to get its positions included on the party’s platform
- distribute communications in close proximity to the election that do not expressly advocate for the election or defeat of the candidate, but refer to a candidate (often described as “electioneering communications”)²

¹ This fact sheet addresses the rules for 501(c)(3) public charities. There are additional rules regulating voter registration and get-out-the-vote activities of [private foundations](#).

- Conduct [voter protection activities](#)
- establish an [affiliated 501\(c\)\(4\) organization](#), which can engage in partisan electoral activity as a secondary activity

The IRS considers [ballot measure advocacy to be lobbying](#), not election activity. A 501(c)(3) public charity can support or oppose ballot measures (and should count the cost against its lobbying limits), but should avoid tying its ballot measure messages to candidates or political parties.

What 501(c)(3)s Cannot Do

While there are a number of activities 501(c)(3) public charities can do, there are a few activities they cannot do. 501(c)(3)s are prohibited from:

- endorsing candidates for public office
- making any campaign contributions (whether monetary or in-kind)
- making expenditures on behalf of candidates
- restricting rental of their mailing lists and facilities to certain candidates or engaging in such business transactions for the first time with candidates
- asking candidates to sign pledges on any issue (for instance, ask candidates if they promise to support the DREAM Act if elected)
- increasing the volume or amount of criticism of sitting officials who are also candidates, as election time approaches
- publishing or communicating anything that explicitly or implicitly favors or opposes a candidate
- highlighting the differences between candidates for public office on a high-profile issue on which the candidates in an election have diverging views
- making a positive or critical reference to someone in his or her status as a candidate
- engaging in issue advocacy when your organization cannot articulate a clear non-electoral purpose for the activity or communication
- criticizing sitting legislators or other elected officials by attacking their personal characteristics or attacking them in their status as a candidate, rather than focusing on the substance of a policy issue







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² Federal and state election laws often require disclosure of electioneering communications (including at times the donors who helped pay for the communication) and may require the inclusion of disclaimers identifying who paid for the communication.





COMPARISON OF 501(C)(3) AND 501(C)(4) PERMISSIBLE ACTIVITIES

This factsheet provides examples of the kinds of advocacy activities that 501(c)(3) public charities and 501(c)(4) social welfare organizations are permitted to do under federal tax law. 501(c)(3)s are prohibited from supporting or opposing candidates for elected public office and must only engage in nonpartisan advocacy. On the other hand, 501(c)(4)s may engage in some partisan activity, but partisan political activity cannot be the primary purpose of a 501(c)(4) organization. When engaging in political activity, organizations must comply with federal, state, and local election law. See [The Connection: Strategies for Creating and Operating 501\(c\)\(3\)s, 501\(c\)\(4\)s and Political Organizations, 4th Ed.](#) and [The Rules of the Game: A Guide to Election-Related Activities for 501\(c\)\(3\)s, 2nd Ed.](#) for more details about the activities described below.

ACTIVITY	501(C)(3)	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		 (c4s that spend on debates for federal candidates cannot support/oppose or endorse federal candidates - 11 CFR 110.13)

ACTIVITY	501(C)(3)	501(C)(4)
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 rent to candidates, must allow any candidate to rent at same price)	
Conduct nonpartisan get-out-the-vote activities, voter registration, and education drives		
Conduct voter registration and GOTV 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		

ACTIVITY	501(C)(3)	501(C)(4)
Fund independent expenditures in support of or opposition to a candidate		
Make campaign contributions (monetary or in-kind)		Depends on election law (prohibited for federal candidates; permissible in some states)
Establish and pay for administrative & 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 organization's issue position with that of a candidate		
Connect organization's criticism of public official to voting in an election		
Highlight the differences between the candidates for public office on a high-profile issue on which the candidates have diverging views		

ACTIVITY	501(C)(3)	501(C)(4)
Ask candidates to sign pledges on any issue		
Post partisan political messages on social media		



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SAMPLE 501(C)(3) ORGANIZATIONAL POLICY FOR ELECTION SEASON

501(c)(3) organizations may engage in many forms of advocacy, including nonpartisan election-related activity. However, 501(c)(3) resources may not be used for partisan political activities, including supporting or opposing a political party or organization and supporting or opposing candidates for public office. In an election year, it is especially important for 501(c)(3) organizations to remind their staff and volunteers that certain election activities on behalf of the 501(c)(3), or using the resources of the 501(c)(3), are prohibited. Many organizations develop internal policies included in their employee manuals to provide clear guidance to staff.

In your policy, it is important to distinguish between what individuals may undertake in the name of the organization and what individuals who work for 501(c)(3) organizations are permitted to undertake as individuals separate from their organization. Individuals are not prohibited from supporting or opposing candidates in their personal capacity, as long as they do not use 501(c)(3) resources. For more information on this subject, see Bolder Advocacy's fact sheet "[Election Activities of Individuals Associated with 501\(c\)\(3\) Organizations.](#)"

Below is sample language that you may consider using to notify your staff of these rules. Each 501(c)(3) organization must assess its own level of risk tolerance, and your 501(c)(3) organization may choose to restrict more activities than the example below.

SAMPLE LANGUAGE

Alliance for Justice (AFJ) is a 501(c)(3) organization. By law, none of its staff time or resources can be used for partisan political purposes—that is, to support or oppose any candidate running for public office. This is a strict prohibition and any perceived violation could result in a costly investigation by the public, media, and/or IRS, and possibly the loss of our tax-exempt status.

EXAMPLES OF ACTIVITIES TO AVOID

Making statements that favor or oppose candidates or political parties at any AFJ event or meeting or in any AFJ official publication, including the website.

Posting comments that favor or oppose candidates or political parties on any AFJ social media, including our blogs, Facebook pages, Twitter accounts (including staff accounts associated with AFJ), etc.

EXAMPLES OF ACTIVITIES TO AVOID (CONTINUED)

Allowing a candidate, political party, PAC, or any group working in a partisan political way to use our conference room without charge.

Giving a candidate, political party, PAC, or any group working in a partisan political way any AFJ mailing list.

Forwarding an email from a candidate, political party, PAC, or any partisan political group that came to your AFJ email account. Do **not** use your AFJ email address to subscribe to candidate or political material. If you inadvertently get candidate or political emails at work, delete them and unsubscribe from your AFJ email address from the email list.

Viewing candidate, party, or other political events or advertisements online on an AFJ computer.

Making statements or handing out literature supportive or critical of a candidate, political party, or PAC at an AFJ event.

Using the copier or postage machine to make copies of campaign materials or to mail them.

Making or receiving telephone calls in support or opposition of a candidate using AFJ's phones. If you receive such calls at work, advise the caller to call you at home or on your cell phone in the evening or on the weekend.

Wearing political buttons or t-shirts while representing AFJ at any event or meeting or in the office.

Putting partisan political signs, bumper stickers, or political buttons up in your office area or office window.

Paying for or attending political events hosted by political parties, campaigns, or other entities.

NOTE: These organizational prohibitions **do not** inhibit your individual participation in election activities, provided you **do not** use any AFJ resources, act, or represent that you are acting as an employee, volunteer, officer, or Board member of AFJ.

Examples of the type of individual election activities you may participate in include voting, making financial contributions to candidates, volunteering for a candidate on your own time (weekends or evenings), or **running for office**.

Many organizations with which you may be familiar, such as Human Rights Campaign and Planned Parenthood Action Fund, are 501(c)(4) organizations that can engage in partisan election activity. Don't look to other groups to determine whether you can do something, since AFJ's tax-exempt status may be different than that of other nonprofits.

If you have any questions about these policies, please contact your supervisor.



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