



Making the Most of Election Season: Civic Engagement & Nonpartisan Advocacy Within the Rules

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Disclaimer

Please note: Today's presentation is informational only and is not intended to constitute legal advice. This presentation references both federal and state laws and regulations but primarily focuses on New York law. Please consult with appropriate counsel for guidance pertinent to your organization or situation.



We will cover...

- Internal Revenue Code (focus on c3's)
 - Prohibited Activities
 - How to Conduct Permissible Activities
 - Voter engagement/education
 - Candidate education/issue advocacy
 - Business activities
 - Staff/board personal activities
 - Ballot measure advocacy
- Campaign Finance Rules




Internal Revenue Code & Partisan Political Activity

Ability to engage in partisan political activity depends on tax status...

501(c)(3)

- May not "participate in, or intervene in ... any political campaign on behalf of (or in opposition to) any candidate for public office."
- Absolute prohibition.
- Violation can → lose tax exempt status.



Internal Revenue Code & Partisan Political Activity

501(c)(4)

- May engage in partisan political activities so long as they are not the organization's primary purpose.

Political committee or PAC

- May engage in partisan political activities.



Which elections are covered?

Federal, state and local elections

Mayor

Governor

President

Senator

Public Advocate

City Council

(Confirmations, ballot initiatives aren't covered)



Don't Do It

- endorse candidates

VOTE FOR
COLLINS !!

- contribute to candidates -- \$, mailing list, nonpublic information

- grade candidates

A+	Jekyll
D	Hyde


- ask candidates to sign a pledge
- reference status as candidate when criticizing/praising



IRS Facts and Circumstances Test

Factors include:

- History of organization's policy campaigns
- Timing
- Focus on one issue or many
- Coordination with other groups
- Target audience
- And more ...



So, what election-related activity CAN you do?

- Voter registration
- Get out the vote (GOTV)
- Voter guides
- Candidate questionnaires
- Candidate forums & debates
- Candidate education
- Staff's personal activities
- Ballot questions
- Advocacy campaigns during election season



Voter Registration & GOTV

- *Must* be nonpartisan in design and implementation
- *May* target specific demographic groups because they are underrepresented, but not to affect the election
- *Do* focus on multiple issues, not just one
- For people hired to carry out the drive, *don't* pay on the basis of the number of voters registered or transported (FEC rule for federal elections)



Voting Records/Legislative Scorecards

- Compiling legislators' votes is allowed if you do not reflect a bias for one candidate or party
- To take advantage of IRS safe harbor for voting records:
 - publish regularly (e.g. at end of legislative session), not just during elections
 - include all incumbents
 - address wide range of topics
 - avoid editorializing



Candidate Questionnaires and Voter Guides

Do

- Focus on civic engagement (not your advocacy work)
 - Include a wide range of issues (at least 3!)
- Send questions to ALL candidates & follow up
 - If no response, you can collect information from published sources, but make clear that you're doing this
- Make guide generally available to the public
- Use Disclaimers: organization is non-partisan; guide is for informational purposes only



Candidate Questionnaires and Voter Guides

Don't

- Rate the candidates
- Compare candidate's positions with your own
- Edit candidates' responses – set a word limit instead



Candidate Forums & Debates

Do

- Make sure design *and* implementation are nonpartisan
- If you don't invite all candidates:
 - Choose a neutral threshold for participation
 - For federal candidates: ensure there are at least 2 candidates (FEC rules)
- Ask questions that cover a wide range of topics



Candidate Forums & Debates

Don't

- Frame questions/format in partisan manner
 - **Don't ask candidates to agree or disagree with your organization's platform***
- Invite only audience members with a particular viewpoint
- Allow candidates to distribute campaign materials



Current Official Appearing at Organization's Event

- In written invitation/confirmation to sitting official:
 - Make clear reason for invitation
 - Note that it is not a campaign appearance
 - Ask them not to solicit contributions or distribute campaign materials
- In public announcements: use disclaimers
“Our organization is a 501(c)(3) nonprofit. We do not support or oppose candidates for public office.”



Candidate/Party Education

Reaching out to candidates before their election

Do

- Provide the same information to all candidates

Don't

- Provide candidates with research or polling data that has a fair market value (solution: put it on your website)



Issue Advocacy

Do

- Make sure you have a real, non-electoral reason for your advocacy
- Document the non-electoral purposes in board minutes, resolutions, or organizational materials
- Adopt traditional and social media policies to help staff avoid involvement in partisan politics

Don't

- Start a new or special advocacy campaign timed around an election
- Focus on individual people – instead, focus on the substance of the issue



Business Activities

Lists, event space, volunteers, data all have a value. To avoid “donating” them to a candidate:

- Provide same services/access to all candidates
- Charge usual, market rate fees



Personal Activities of Staff & Board

Everyone has a right to participate in the political process, even if they are affiliated with a nonprofit

Don't

- Use organizational resources:
 - Time
 - Mailing list
 - Email
 - Computer/copier
 - Letterhead

Do

- Use work title for identification purposes only
- Adopt a policy on board & staff participation in campaigns
- Report fundraising/paid political consulting if you are a NYC lobbyist



Internet & Social Media

- Social Media: Be careful about liking or forwarding
 - posts from a candidate's election account
 - posts by someone else about a candidate
- Links: Organizations are responsible for links – even if the webpages have changed
- Online Forums: Will you allow public to post political content?



Ballot Questions & Referendums

- IRS rule:
 - (c)(3)'s can work to influence ballot questions & referendums
 - that work will count towards the IRS lobbying limit
 - must report that work on IRS 990 Sched. C



Ballot Questions & Referendums

- Campaign Finance Rules: NYS & NYC
 - cover most ballot question advocacy communications distributed to 500+ people
 - audience threshold is just 50 people for a paid digital ad
 - campaign finance obligations include:
 - register with BOE
 - file disclosures periodically with BOE and/or NYC
 - disclosures/disclaimers on the communication
 - ban on foreign nationals controlling more than 5% of Board



Ballot Questions & Referendums

- What can you do without triggering campaign finance rules?
 - internet postings: don't pay for ads, SEO or boosting
 - write an op ed
 - contribute money, mailing list, services etc. to a registered ballot measure committee

https://lawyersalliance.org/userFiles/uploads/legal_alerts/Ballot_Measures_Legal_Alert.pdf



Campaign Finance: Communicating About Candidates

a 501(c)(3) organization could be covered by:

- **FEC rules** – if it pays for broadcast, cable or satellite communication mentioning a federal candidate in the months before a federal election
- **NYS Board of Elections rules** – if it sends out a communication during an election year that refers to & advocates for/against a state/local candidate



Next steps

- Adopt policies:
 - social & traditional media
 - personal political activities
 - providing space or other resources to candidates
- Document:
 - nonpartisan goal of issue advocacy & civic engagement work
 - how your coalition work with partisan political groups will remain nonpartisan
 - nonpartisan goal of appearance by sitting official, and prohibition against campaigning or fundraising
- Set up affiliate that can engage in political activity?



Resources

- Lawyers Alliance's advocacy compliance materials:
<https://lawyersalliance.org/advocacy>
- Lawyers Alliance's resource call hotline: call (212) 219-1800 x 224 or email
resourcecall@lawyersalliance.org
- Bolder Advocacy fact sheets & webinars <https://bolderadvocacy.org/>